

**DISPUTE SETTLEMENT IN A
SOUTHERN SMALL CLAIMS COURT**

BY

ELIZABETH DIXON PURDUM

**A DISSERTATION PRESENTED TO THE GRADUATE COUNCIL
OF THE UNIVERSITY OF FLORIDA IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY**

UNIVERSITY OF FLORIDA

1983

Copyright 1983

by

Elizabeth Dixon Purdum

ACKNOWLEDGMENTS

Many people contributed in various ways to this work. My committee members, J. Anthony Paredes, Allan Burns, Elizabeth Eddy, Paul Doughty, and Robert Moberly, offered numerous helpful suggestions. I owe a special debt to J. Anthony Paredes, the committee chairman. He was always accessible and gave me constant guidance throughout this lengthy undertaking. His critical eye and gentle prodding made this work considerably better than it would have been otherwise. Each of the other committee members made a unique contribution to this dissertation. Allan Burns introduced me to the concept of "action chains" and to many other ideas that proved relevant to understanding the small claims court and its participants. Elizabeth Eddy interested me in the study of formal institutions in complex societies and taught me the importance of examining these institutions in their historical context. Paul Doughty encouraged me to think about the practical relevance of anthropological research, while Robert Moberly, a law professor, asked many difficult questions that helped me clarify my own thinking.

I would also like to thank several people at the Florida Resources and Environmental Analysis Center at Florida State University where I work. Edward Fernald and Frank Unger generously allowed me to follow a flexible schedule necessary to complete my field research. Dale Friedley, Teresa Ingles, and Patricia Mitchell assisted me with the computer analysis. The Cartographic Division, under the direction of Jim Anderson, drew the figures.

Mary Melton and Hunter Barnett did an excellent job of typing the dissertation. Jim Seoning of the Statistical Consulting Center at Florida State University reviewed my statistical analysis.

Mike Bridenback of the Florida Office of the State Courts Administrator, and Jack Planchard and Richard Reeves, formerly of the same office, also deserve thanks. They highlighted for me many of the current issues in small claims court research. Mike Bridenback and Jack Planchard also shared with me their own research instruments and data from their statewide study of small claims courts.

The Leon County judges gave generously of their time and patiently explained to me many things about the court and the law. The deputy clerks also assisted me, particularly when I was collecting data from the court records. I would also like to thank all the people who shared their court experience with me. Without the help of the judges, clerks, and litigants, this project would not have been possible.

Lastly, I would like to thank my husband Ken Plante, who supported and assisted me in innumerable ways, and our son David, whose good nature and cheerful disposition provided a welcome break from the often tedious tasks of research and writing.

CONTENTS

ACKNOWLEDGMENTS	iii
ABSTRACT	vii
CHAPTER 1	DISPUTE SETTLEMENT AND COURTS: A CROSS-CULTURAL PERSPECTIVE
	1
	Development of the Study of Law and Anthropology
	4
	Studies of Small Claims Courts
	18
	Statement of Research Problems
	26
CHAPTER 2	METHODOLOGY
	33
	Concepts and Definitions
	35
	Research Methods and Techniques
	38
CHAPTER 3	BACKGROUND AND SETTING
	48
	The Local Setting
	48
	The Greater Legal Setting
	56
	Development of Small Claims Courts
	64
	Summary and Conclusions
	76
CHAPTER 4	LITIGANT CHARACTERISTICS
	79
	Types of Cases
	81
	Attorney Representation
	87
	Demographic Characteristics
	103
	Relationships between Litigants
	118
	Summary and Conclusions
	152
	Notes
	157
CHAPTER 5	THE LEGAL PARTICIPANTS
	158
	The Judges
	160
	The Clerks
	181
	Attorneys
	196
	Litigants' Attitudes Toward Legal Participants
	205
	Summary and Conclusions
	212
CHAPTER 6	THE PROCESS
	216
	Prelitigation Efforts
	218
	Filing a Claim
	230
	The Pretrial Hearing
	231
	The Hearing
	252
	The Decision
	281
	Summary and Conclusions
	287
	Notes
	293

CHAPTER 7	CONCLUSIONS	294
	Litigants	299
	Court Personnel	303
	The Small Claims Process	304
	Leon County Small Claims Court in its Wider Contexts	309
	Recommendations	321
	Areas for Future Research	328
GLOSSARY		332
APPENDIX A: CASE STUDY SUMMARIES		337
APPENDIX B: RESEARCH INSTRUMENTS		349
REFERENCES CITED		358
BIOGRAPHICAL SKETCH		373

Abstract of Dissertation Presented to the Graduate Council
of the University of Florida in Partial Fulfillment of the
Requirements for the Degree of Doctor of Philosophy

DISPUTE SETTLEMENT IN A
SOUTHERN SMALL CLAIMS COURT

By

Elizabeth Dixon Purdum

April 1983

Chairman: J. Anthony Paredes
Major Department: Anthropology

Anthropologists, long interested in dispute settlement in tribal and village societies, have given little attention to dispute settlement in modern complex societies, such as the United States. A small claims court was selected as the most likely place within the formal judicial system to find disputes brought by a range of individuals and organizations. The Leon County, Florida, small claims court was chosen for study because few small claims courts have been examined in the South. Research methods included observation, interviews, quantitative techniques, and participant observation. A case file sample ($N = 291$), a pretrial observation sample ($N = 549$), and an extended case study sample ($N = 42$) were drawn.

Types of litigants and types of relationships between them are described. Attitudes and behavior of court personnel are also examined. The small claims court process is then analyzed by tracing disputes from the prelitigation state, through pretrial hearings and trials, to post-court actions.

Most litigants make considerable efforts to resolve their disputes before filing in court. Filing marks a severing of their relationship. Judges dispense quickly with most cases during pretrial hearings. Little conciliation occurs during these hearings. Negotiation is more common, but appears to have a strong element of coercion. As structured, pretrials are not effective for settling disputes or for educating litigants for later trials. During trials, judges transform and narrow disputes presented by litigants. Certain types of cases are particularly problematic for judges and may be handled better in another forum. Formality increases, often to the disadvantage of unrepresented litigants, when attorneys are present.

Tension exists between judges, clerks, and attorneys, as well as between court personnel and litigants. Both judges and clerks perceive their roles as stressful. Litigants think judges favor attorneys, whereas attorneys think judges favor unrepresented litigants.

The findings are placed in the context of broader cultural patterns and previous anthropological studies of dispute settlement. Based on the results of the study, it is recommended that a more effective means of educating litigants be developed, that the role of attorneys be limited, and that litigants be given the option of mediation.

CHAPTER 1

DISPUTE SETTLEMENT AND COURTS: A CROSS-CULTURAL PERSPECTIVE

The hallmark of anthropology has been a cross-cultural, comparative approach to the study of human behavior. Within the anthropology of law, writers have frequently expressed the desirability of documenting the variety of ways disputes are handled within every society, complex as well as simple, recognizing that any theories of legal processes are incomplete as long as anthropologists limit themselves to small-scale societies (Abel 1973; Epstein 1967; Bohannon 1967). In comparison with the extensive research on law in tribal and village societies (e. g., Barton 1919; Malinowski 1926; Rattray 1929; Hogbin 1934; Llewellyn and Hoebel 1941; Hoebel 1954; Gluckman 1955; Bohannon 1957; Pospisil 1958; Nader and Todd 1978), anthropologists have done very little investigation of law in complex western societies, particularly the United States. Within recent years, a few anthropologists have directed attention to the United States and have studied such issues as plea bargaining in an urban criminal court (Hoane 1978), use of criminal courts in a polyethnic urban neighborhood (Merry 1979), mediation in a northern city (Witty 1978), dispute settlement in a southern town (Greenhouse 1976), and linguistic variation in a North Carolina court (O'Barr 1982). To date, Nader (1980) has edited the most comprehensive study of dispute settlement in the United States, a volume of essays on alternatives to the judicial system for resolution of consumer grievances. Examination of these alternatives is important, but it is equally important to examine the role courts themselves play in the community as Merry (1979) has done for criminal courts. Moreover, consumer

grievances are not the only type of problem brought to the courts by individuals in the United States. In order to understand the function of courts the wide range of cases brought to them must be described.

Detailed studies of lower courts are of particular practical relevance in light of criticism of the courts by members of the legal profession for their failure to resolve minor disputes (ABA 1978; Erickson 1978; Bell 1978). These criticisms have led to proposals for changes both within and outside of the current court structure. For example, within lower civil courts arbitration as an alternative to adjudication has been proposed (National Institute for Consumer Justice 1972; Small Claims Court Study Group 1972). Mediation of both civil and criminal grievances through neighborhood or community dispute settlement centers has also been suggested as a means of resolving minor disputes (Danzig and Lowy 1975). Before reforms are implemented, however, more data are needed on the actual day-to-day operations of the courts. The attitudes of the participants need to be detailed and the effects of these attitudes on court operations explored. Questions such as the types of cases handled best by the courts and those which may be handled better in another forum need to be addressed. Because of their training, which stresses studying both behavior and attitudes of participants in a natural social setting, anthropologists may be able to make a unique contribution to the understanding of the actual operations of courts. Anthropologists are also well aware of the unwanted consequences of implementing reforms without adequate understanding of the workings of the community or organization to be changed (Spicer 1952; Clifton 1970; Foster 1969; Kimball and Provinse 1942; Paul 1955).

The organization selected for this study is a small claims court in a Southern county. The primary reason for this selection was the belief that such

a study could contribute to the anthropological literature on dispute settlement. Within the subfield of anthropology and law, researchers have been concerned primarily with the variety of means developed by members of different cultures for resolving disputes between individuals (e.g., Barton 1919; Gluckman 1955; Hoebel 1954; Gulliver 1973; Gibbs 1963). Since their inception in the early 1900s small claims courts have had a reputation as "people's courts." Even today there is a popular television show entitled "The People's Court," which presents actual cases from a California small claims court. Throughout the United States small claims courts were designed to settle a high volume of disputes for small amounts of money brought by individuals or businesses, with or without the aid of attorneys. More than any other courts, they are the setting where the widest cross-section of members of different organizations, races, classes, and ethnic groups interact. Thus, a small claims court was thought to be the most likely place within the formal judicial system to find a wide range of disputes. Within small claims courts, it is also possible to study attitudes toward justice and law not only of the members of the formal court and the bar but also of members of the community since many individuals present their cases in their own words without the assistance of attorneys. The small claims court is, in a sense, an arena where informal and formal modes of dispute settlement intersect.

The small claims court in Leon County, Florida, was selected for study because not only does it have a typically wide range of participants, but it also exhibits a variety of dispute settlement mechanisms, including conciliation, negotiation, and adjudication. Furthermore, the vast majority of small claims courts studied have been outside of the South. In her 1977 review article on anthropological studies in the American South, Carole Hill suggests that

although the South is becoming more and more like the rest of the United States in terms of objective measures such as urbanization, income, and education, a distinctive culture still exists. If Hill's suggestion is true, we would expect to find some differences between the small claims court in Leon County and small claims courts studied in other parts of the nation. Thus a study of Leon County small claims court will contribute to the literature on small claims courts as well as to the more general literature on dispute settlement.

Like the rest of the legal system, small claims courts have received a great deal of criticism (Pagter et al. 1964; Hollingsworth et al. 1973; Moulton 1969) and a number of reforms have been proposed. In response to this criticism, the Florida Supreme Court is currently studying, through questionnaires, interviews, and examination of the records, thirteen small claims courts in the state. The detailed, long-term (approximately one year) study of a single court reported here will help explain and clarify statistical patterns found in the broader study and will thus be useful for understanding the impact of any proposed changes. Patterns of behavior of which the participants are unaware may emerge as a result of observation and informal interviews. In addition, as anthropologists have long realized, it is important to examine what individuals actually do as well as what they say they do.

Development of the Study of Law and Anthropology

In the nineteenth century, before anthropology emerged as a discipline, individuals interested in understanding of society often turned to the study of law (Pospisil 1973). Thus, many of the founders of anthropology (for example, Bastian, Morgan, Maine, and McLennan) were trained in law. These men were

concerned with tracing the evolution of specific social institutions, particularly those within the realms of kinship and law. Even though a broad analysis of cultural history was their primary goal, "they clearly understood that law, marriage, kinship and so on, were to be understood in relationship to each other and the social conditions in general" (de Waal Malefitt 1974: 128). Thus, for example, Maine based his theory of social evolution on the rise of the role of contracts as a consequence of the declining role of kinship (1861).

In the early part of this century, anthropologists shifted their attention from elaboration of evolutionary schemes derived primarily from second-hand information to accounts of individual cultures derived from participant observation. This was the age of salvage ethnography, when anthropologists were busy collecting data on exotic ways of life threatened with extinction. This was also a time when England had a vast colonial empire to administer with relatively few colonial officials. Anthropologists, or government officials trained in anthropology, were employed to gather a wide range of information on native peoples, especially under the policy of Indirect Rule, in which native personnel and traditional government mechanisms were used as much as possible (Foster 1969). Under Indirect Rule, British officers who heard appeals from the native courts frequently used manuals prepared on native law (Roberts 1979). Many early ethnographers, however, ignored law altogether (Pospisil 1973), although a few collected data on conflict and dispute settlement as part of more general descriptive studies of non-Western societies (Barton 1919; Malinowski 1926; Rattray 1929; Hogbin 1934). Early kinship studies such as Radcliffe-Brown's study of the mother's brother in South Africa (1924) also addressed fundamentally jural questions of descent and property rights. Primarily descriptive, these early studies detailed the variety of dispute

settlement mechanisms, including negotiation, mediation, and adjudication, developed by the world's societies.

One of the first definitions of law by an anthropologist was proposed by Malinowski writing in the introduction to Hogbin's Law and Order in Polynesia (1934). According to Malinowski, law consists of "the rules which curb human inclinations, passions or instinctive drives; rules which protect the rights of one citizen against the concupiscence, cupidity or malice of the other, rules which pertain to sex, property and safety" (1934:lxii). For Malinowski, the main attribute of law was obligation between individuals in ongoing relationships: law was enforced not by the courts and police but by the specific mechanism of reciprocity inherent in the structure of society (Malinowski 1945). Llewellyn and Hoebel (1941), like Malinowski, viewed law as a system of rules existing in all societies. Their primary contribution, however, was not in their definition of law, but in their development of an explicit methodology for the study of law in non-Western societies. For their study of the Cheyenne, Llewellyn, a lawyer, and Hoebel, an anthropologist, borrowed the concept of case study from the philosophy of legal realism, a branch of thought within the American legal system. The legal realists' position was that the rules of law were best understood through the examination of court cases: "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by law" (Holmes 1897 in Aldisert 1976: 30). Llewellyn and Hoebel, like Holmes, believed that law "must be dug out of the cases in which actual troubles have been dealt with" (1941: 27). Although Hoebel stated that his approach to law was "flatly behavioristic and empirical" (1954:5), he, like most legal scholars, was basically concerned with discovering the rules behind behavior. Hoebel viewed members of each society as holding general propositions about the

nature of the world and about what is desirable and undesirable. He called these propositions "postulates" because he believed that people reasoned from them and based their behavior on them. These kinds of propositions are more commonly referred to as "values" or "cultural themes." Hoebel saw the consistency among postulates and between postulates and behavior as measures of integration of a culture. Some of a culture's postulates are enforced by the culture's legal system -- that aspect of the culture concerned with social control -- and are referred to by Hoebel as "jural postulates." It was these that he sought to uncover by recounting a society's trouble cases.

Hoebel's work inspired anthropologists to turn again to the study of law in the 1950s (Gluckman 1955; Bohannan 1957; Pospisil 1958; Smith and Roberts 1954; Gibbs 1963). This resurgence of interest in law in tribal and village societies led to lengthy discussions of such questions as do all societies have law, and what is law? Hoebel (1954), Radcliffe-Brown (1952), and Redfield (1967) all emphasized the application of physical sanctions in their definitions of law. Redfield (1967: 67) defined law as the "application of force by the state in support of explicit rules of conduct" and thus found little law in primitive societies. Pospisil (1967) stressed the importance of nonphysical sanctions in his definition of law. He saw psychological sanctions, such as ostracism, ridicule, avoidance, and denial of favors, as strong a means of control as physical sanctions. Among the Kapauku of New Guinea he found being shamed in public, which sometimes lasted for several days, was considered much worse than any other sanction except capital punishment. Pospisil also questioned the use of sanction as the only criterion of law. To his definition of law he added three other criteria: authority, intent of universal application, and obligatio. Authority was the requirement that an individual (or subgroup) had sufficient

influence to cause the majority of the group's members to conform to his decision. Universal application was the authority's intention that his decision would be applied to all similar situations in the future. Obligatio was the authority's view, as articulated in his decision, of the rights of one party and the duties of the other.

Bohannon (1967) returned to Malinowski's definitions of law (1934; 1945) as the starting point of his conception of law. He considered Malinowski's definition, with its emphasis on reciprocity, to be too broad, to refer not to law, but to custom. Bohannon viewed law as the reinstitutionalization of some of society's norms within legal institutions. His view was similar to Hoebel's point that law entailed the assertion of some of a society's values in jural postulates. Bohannon also foreshadowed the later processual approach to the study of law by characterizing dispute settlement in three steps: the ways problems are disengaged from institutions of origin, the ways trouble is handled within the legal institution, and the ways solutions are integrated into nonlegal institutions. Within legal institutions two types of rules--procedural and substantive -- were evident and should be studied.

While Hoebel (1954), Pospisil (1967), and Bohannon (1967) focused on defining law, another approach was developing within the subfield of anthropology and law. Nader and Todd (1978) characterize this approach as structural/functional. The kinds of studies relate types of social relations or types of conflict to particular mechanisms of dispute resolution. For example, Gluckman (1955) and Nader (1969b) have suggested that when a relationship between parties is multiplex (i.e., entailing more than one type of relationship, for example, a kin as well as an economic relationship) and ongoing, mediation is more likely to occur than adjudication. Collier's study of two neighboring

communities in Chiapas, Mexico, supports this view (1979). She found that mediation was common in one town, where everyday quarrels threatened production units. In the other town where individuals participate in the larger economy as wage earners in menial jobs, not only was adjudication the common form of dispute settlement, but individuals were unwilling to act as mediators. Macaulay, a lawyer, found in a study of conflict resolution among businessmen that those with ongoing relationships preferred to resolve their problems through negotiation rather than adjudication (1963). In a similar way, Merry (1979) found in a study of an urban criminal court that the crucial variable for explaining when people file charges is whether they intend to continue their relationship. They filed in court only after they had decided to sever the relationship. The relationship's duration or complexity was not a factor in their decision. Black (1976; 1980) and Starr and Yngvesson (1975) have suggested that persons of equal rank are more likely to work out a compromise than those of unequal rank. In a United States shopping center compromise based on face-to-face relationships between those of equal rank was found to be the most effective way of resolving and foreclosing the escalation of disputes (MacCallum 1967).

According to Aubert (1969) and Forman (1972), the determinant of the most desirable dispute settlement mechanism may not be the relationship between parties, but may instead be the type of conflict. Aubert has suggested that conflicts of interest, in which parties agree on standards of reasonable or appropriate behavior, are best resolved by negotiation. In contrast conflicts of values, in which parties disagree on fundamental standards of right and wrong, are most effectively resolved by adjudication. Forman found in an Ecuadorian village that disputants employed different strategies according to the issue in

dispute regardless of the nature of their relationship (1972). Individuals were most likely to use noncompromise forums such as courts for cases involving land and other valuable property. In these instances individuals were willing to risk sacrificing their relationship in order to gain the resource. In a study of dispute settlement in urban Ghana, Lowy (1978) describes the choice of remedy agents as dependent on the goals of the disputants as well as on the degree of multiplicity of their relationships. Urban Ghanaians used courts not only for cases involving money, but also as a means of obtaining prestige and status. The choice of dispute settlement mechanisms may also be affected by a party's social network (Nader and Metzger 1963; Jacob 1969; Boissevain 1974; Gulliver 1973). Nader and Metzger (1963) found among the Zapotec of Mexico that women without male relatives, who might help them resolve a conflict, commonly resorted to the court. Likewise Todd (1978) found in a study of a Bavarian village that socially marginal members of the community were most likely to bring their problems to the village court.

The processual approach to the study of law represented a shift in interest among anthropologists from institutions and social groups to the role individuals play in deciding the course of disputes. This approach stemmed from the work of Colson (1953), Turner (1957), Bailey (1960, 1969), Gulliver (1971), and Barth (1966). Implicit in this view was recognition not only of law in every society, but of a multiplicity of legal systems in any society (Pospisil 1971; Nader and Todd 1978; Nader 1980). Within the processual approach disputes are described as they evolve over time with attention given to the motives and choices available to all participants at each step of the process (Nader and Todd 1978; Collier 1975; Moore 1978; Hall 1976). To facilitate cross-cultural comparisons of law, Nader and Todd (1978) have proposed that disputes be described in terms

of a series of universal components. These components are the item in dispute, the parties involved in the conflict, the way in which each party presents the dispute in a public forum, the procedure used in the public forum to handle the dispute, the outcome, the termination of the dispute, and the enforcement.

The processual approach has been criticized insofar as it assumes equality among society's members by failing to acknowledge social, economic, and cultural constraints on individual choice (Moore 1978). Galanter, a political scientist, argues that the adversary nature of litigation in the United States favors those who litigate most frequently and who have the resources to litigate effectively (1974). Two other political scientists, Eisenstein and Jacob (1977), found members of disadvantaged groups to be much more likely than members of advantaged groups to be punished by criminal courts. These individuals were also found to be less likely to receive benefits from civil courts in the form of judgments in their favor. In rural Mexico, Hunt and Hunt (1969) also found uneven use of the court by members of different social groups. Indians were extremely reluctant to bring cases to the district court because, according to Hunt and Hunt, of the inconvenience of the court's hours and the failure of the court officials to recognize the validity of certain aspects of Indian culture. Non-Western cultural differences in communication style may also be a distinct disadvantage in a Western courtroom. In a study of Australian Aboriginal courtroom behavior, Liberman (1981) found that Aborigines' speech and non-verbal behavior were frequently misunderstood by Anglo Australians. Ordinary Aboriginal discourse is characterized by an effort to preserve harmony within the group. Individuals refrain from asserting their points of view too strongly and rarely answer a question with a simple yes or no. Aborigines have also developed submissive interaction patterns for dealing safely with Europeans.

These conciliatory and unassertive communicative patterns work to the detriment of Aborigines in the courtroom where interaction is characterized by intense disagreement and direct questioning.

Related to the processual approach, with its concern for individuals, are ethnoscience investigations of legal institutions. The goal of ethnoscience is to detail the ways people conceptualize aspects of their cultures, to describe cultures as seen by actors themselves. This so-called emic view is commonly derived from intensive interviewing of a limited number of representatives of a culture. Although the techniques of ethnoscience have been most commonly applied to kinship systems (Goodenough 1965; Wallace 1965), there have been some attempts in recent decades to apply them to the domain of law. In a general way Bohannon (1969) and Frake (1969) have adopted an ethnoscience perspective by insisting that a non-Western legal system must be described in "native" legal terms and not in the terms of Western jurisprudence. Other ethnoscience studies of law have examined law or courts from the point of view of one type of participant (for example, attorneys or defendants). Black and Metzger (1969) have used eliciting techniques from ethnoscience to study American law terms, and Spradley (1970) has looked at a court in the United States from the point of view of defendants charged with drunkenness.

Other anthropologists have also examined law and the courts in the United States. Nader (1980) and Greenhouse (1976) have studied dispute settlement in general and Merry (1979) and Hoane (1978) have studied particular courts. O'Barr (1982) has focused on styles of language and their effect in a North Carolina criminal court. All these studies are all ultimately concerned with questions of cultural pluralism, access, and power in a complex society.

The United States, as an example of a modern, industrial society, is frequently contrasted with small-scale, traditional societies. Nader and Todd (1978) characterize law in the United States as "law between strangers" and state access to law is more readily available in some underdeveloped parts of the world than in the United States. In a program produced for the Odyssey series on public television, entitled "Little Injustices," Nader juxtaposes the availability and effectiveness of dispute settlement mechanisms in rural Mexico with the inaccessibility and ineffectiveness of such mechanisms in the United States. Lack of access to dispute settlement forums in the United States is viewed as contributing to feelings of powerlessness among the general public and as serving to maintain the status quo (Nader and Todd 1978; Nader 1977). Access is limited by high costs, delays, distance, lack of information and domination of dispute settlement forums by professionals. These professionals develop a subculture during their training that alienates them from many of their clients (Friedson 1971), a phenomenon also noted among health care professionals (Taylor 1970). Aubert (1966) found members of the legal profession placed a higher value on communicating with each other than with their clients. There has also always been a close association between the legal profession and business in the United States (Krause 1971). As a consequence, lawyers are more likely to be sympathetic toward the concerns of businesses than the concerns of individuals.

Anthropologists view small-scale, traditional societies as not only having more accessible dispute settlement forums but as also having a wider range of mechanisms to deescalate social conflict than do complex, urbanized state societies (Nader and Yngvesson 1973). For example segmentary opposition, conflicting loyalties, rituals of rebellion, and compromise mechanisms, common

in traditional societies, are weak or absent in the United States. Anthropologists, however, frequently forget that although multiplex relationships in which individuals and groups are linked are generally necessary for the development of these mechanisms and may serve to deescalate conflict, this same feature may lead to the violent escalation of a dispute. A dispute that may have remained limited to individuals in the United States may spread to bloodshed between groups as Koch has documented for the Jale of New Guinea (1978).

In all societies individuals without links to powerful people may resort to formal dispute settlement forums such as courts. In an urban housing project in the United States Merry (1979) found that individuals, particularly women and old people who could not resort to violence or mobilize others to violence, used the court to harass and threaten the other party. The court, however, rarely resolved these disputes, which were ultimately resolved by avoidance. In contrast to traditional courts (Nader and Metzger 1963), where the court's goal is to arrive at a mutually acceptable compromise, the court described by Merry's informants functioned to determine only if the law had been violated and, if so, to punish the offender. In contrast to Nader and Todd's prediction about limited access to the courts in the United States (1978), Merry found the court accessible in terms of time and cost, although it was not particularly effective in resolving disputes.

Nader, in a study of alternatives to the courts for resolving consumer grievances, found that these forums were also ineffective (1980). Her students examined "Action Lines," congressional offices, and the Better Business Bureau from the point of view of the complainant. They found responses by businesses to complaints to be characterized by denial. The whole complaint process was structured to encourage individuals to drop their complaints either by making

the complainants feel deviant or by referring them from agency to agency. Businesses, with the advantages of time, resources, and knowledge on their side, were usually successful in getting people to drop their complaints.

Numerous other social scientists have focused on law in the United States. Their primary concern has not been with dispute settlement in general, but with the operation of formal institutions such as the police and the courts. However, the concerns and methods of some of these researchers are similar to those of the anthropologists and provide a broader base of knowledge about the court system than is available in the anthropological literature. These studies may be grouped for convenience of discussion according to three approaches, recognizing that these approaches are not mutually exclusive. Some studies (Black 1976; Black 1980) are primarily deductive and as such are concerned with the testing of predetermined hypotheses. Other studies are mainly inductive and exploratory. Many of them describe the court in terms of organizational theory, drawing in particular on the work of Max Weber (Feeley 1979; Eisenstein and Jacob 1977; Mileski 1971; Brickley and Miller 1974). A third type is the experimental approach of social psychology. In contrast to the first two approaches, which describe the "natural" behavior of actual participants, the approach of social psychology is experimental; that is situations are contrived so that variables may be controlled (Saks and Hastie 1978).

Black's hypotheses are similar to those proposed by anthropologists and relate either type of social relation or social position of litigants to use of the courts. Black suggests that people of unequal rank are more likely to take a problem to a court, while people of equal rank are more likely to work out a compromise. When people are of unequal rank, the person of higher rank is most likely to bring the case to court. Black also hypothesizes that people with

less wealth have less law, that they are less likely to use the law in dealings with one another, and when they do are less successful than wealthier people. According to Black, law decreases at extremes of intimacy, and organizations are more litigious than individuals. Black tested some of these hypotheses in a study of the dispute settlement function of police in three large northern cities (1980). He found that police frequently employ conciliation with disputants of equal rank who are involved in ongoing relationships; that they are more likely to honor requests from white collar than from blue collar complainants; that the greater the relational distance between a complainant and a suspect, the greater the likelihood of arrest; and that police are more likely to use a conciliatory rather than a penal style of dispute settlement with middle class people than with lower or working class people.

Descriptive studies of the court by sociologists and political scientists have characterized courts as a particular type of formal organization. For example, Feeley (1979) in his study of a lower criminal court views the court as a complex organization, but not as a bureaucracy. A bureaucracy implies a hierarchical structure and commonality of purpose among its elements which he did not find in the court. The antithesis of bureaucratic behavior as described by Weber is discretion -- the basing of decisions on individual judgments rather than on rules--and absence of a single authority. According to Feeley, courts, in contrast to bureaucracies, are characterized by decentralization of authority, minimum of hierarchy within each court, and discretion to negotiate settlements. As in the marketplace, the pursuit of conflicting interests is expected to produce fair and efficient decisions. Courts, unlike the ideal bureaucracy, acquire staff in a traditional, nonrational way, recruiting personnel on the basis of political, kin, and friendship ties. Eisenstein and

Jacob (1977) developed the theory of courtroom workgroups to explain how decisions are actually reached in felony courts. The judge, although theoretically most dominant, does not always play the most decisive role. It is the interaction of the members of the courtroom work groups--prosecutor, defense counsel, clerks, and bailiffs--that determines the outcome of cases. Brickley and Miller (1974) and Mileski (1971) also stress the importance of studying the interaction in the courtroom for understanding the outcome of particular cases. Both studies found that resolution of initial cases affected resolution of subsequent cases. Mileski observed in a lower criminal court that the judge's first decision set the tone for the day. Brickley and Miller (1974) also found that the defendant seemed to learn from the outcome of the preceding cases the kinds of behavior expected by the court. For example, a plea of guilty or not guilty by the first defendant seemed to set the tone for the day.

The approach of psychologists to study of the formal judicial system, in comparison with the other approaches discussed, is least like the approach of anthropologists. Psychologists have applied the psychology of personality to jury selection, the psychology of memory to eye witness testimony, and the psychology of attitude change to advocacy (Saks and Hastie 1978). The characteristic approach of psychology is experimental whereby dependent and independent variables are defined and then the experimenter manipulates the independent variable and measures the dependent variables. Those experiments are frequently conducted in the classroom rather than the courtroom, and the subjects are usually college students. This approach is quite different from the inductive, natural history method normally applied by anthropologists.

From this brief survey on dispute settlement and courts several themes are evident. All anthropological studies of law have been based on the assumption that the social processes of law are best examined in relation to actual incidents of conflict as they unfold in the community. These studies and studies by other social scientists have revealed the importance of social variables (e.g., relationship between parties, relative ranks of parties) for understanding the selection and effectiveness of various dispute settlement mechanisms. Anthropologists have also delineated the economic, social, and cultural conditions in complex societies that may affect access to and effectiveness of dispute settlement forums.

Studies of Small Claims Courts

The studies of small claims courts are more limited in scope than most anthropological studies of law and the courts. Since 1960 there have been three major (i.e., nationwide) studies of small claims courts and at least a dozen studies of particular courts. Most of these studies can be divided into two categories: (1) those designed in an effort to determine who is using the court and to evaluate findings in relation to the court's original goal as a "poor man's court"; and (2) those designed as part of the Ralph Nader-inspired consumer justice movement that arose in the 1960s. The goal of the second type of study (including two of the three major studies) is to examine the usefulness of small claims court as a forum for the resolution of consumer grievances. A third major study of small claims court (Ruhnka et al. 1978) primarily addresses questions of administration and efficiency.

In 1964, Pagter, McCloskey, and Reinis systematically sampled 386 cases from the records of the Alameda County, California, small claims court. They found that 30 percent of the plaintiffs were individuals, while 70 percent were

businesses and governmental agencies. In contrast, 85 percent of the defendants were individuals. Plaintiffs won (i.e., received judgment) in 90 percent of the cases. Pagter et al. suggested that the disproportional use of the courts by business and government plaintiffs found in urban California may not occur in rural areas. Hollingsworth, Feldman, and Clark (1973) designed a study to test the hypothesis proposed by Pagter et al. that there are fewer businesses and government plaintiffs in small claims courts in rural areas. Two small claims courts in Ohio were selected for study--one urban and one rural. Court records were systematically sampled, and no major differences were found between rural and urban courts. In fact, more business plaintiffs were found in rural than in urban courts (89 percent to 75 percent), although business plaintiffs in rural areas were more likely to be sole proprietors. For both areas, Hollingsworth et al. reported high rates of defaults (decisions given to the plaintiff when the defendant fails to appear), high percentages of decisions for plaintiffs, and problems collecting judgments. Fine (1978) found, in a study of a court in a large southern California county, that cases filed by businesses are more likely to end in default, while cases filed against businesses are rarely decided by default. Hollingsworth et al. reported that individuals who did file claims were in most ways representative of their communities. They were, however, slightly better educated than the population as a whole. Eighty-five percent of the plaintiffs interviewed said that they would use the courts again. Hollingsworth et al. concluded that although the courts are generally successful in terms of litigant satisfaction, there are two areas in need of attention: collection of judgments and legislative direction to small claims

court judges. Judges, who were interviewed in the course of the study, frequently expressed confusion about their proper role in small claims court, particularly when one litigant was not represented by an attorney.

Moulton (1969) addressed the problem of the poor, individual litigant in a California small claims court. After sampling of records and five days of observation, she concluded that poor, individual litigants were most often defendants and that the real beneficiaries of small claims courts were businesses and governmental agencies. She saw the court as an intimidating place for defendants and concluded that the defendants are unlikely to know or understand what constitutes a valid defense. "There is no telling how many of the frightened defendants who 'simply owe the money' would qualify their answers or reveal facts constituting a defense if they had legal knowledge" (Moulton 1969: 1664). Moulton concluded with an argument for the right to legal representation and suggests the use of "legal technicians" to assist both plaintiffs and defendants in small claims court.

Rapson (1961) interviewed 65 defaulting defendants from the Dane County, Wisconsin, small claims court, but did not find these individuals to have valid legal reasons for not paying a claim as Moulton (1964) had suggested. Instead he found many of these individuals to be young, working class, married men with young children and with credit payments so large that they did not have enough money left each month for necessities such as food and clothing.

Klein (1971) was the first researcher to examine systematically consumer plaintiffs and to suggest the possibility of using small claims courts as a forum for resolving consumer grievances. He examined court dockets in Hartford, Connecticut; New York, New York; Detroit, Michigan; and Berkeley, California, and found that about 10 percent of the cases filed constituted consumer

complaints (defined as an individual filing suit against a business). Questionnaires were sent to each of these plaintiffs, and approximately half of them (153) responded. Most of the consumer plaintiffs reported satisfaction with the court and all but two stated they would use it again. Klein sees some limitations to small claims courts, however, particularly when consumers are defendants and not plaintiffs. "Ordinarily, it is the defense attorney's job to call the court's attention to aspects of the law. But when, as in the usual consumer case, there is no defense attorney, the burden falls on the judge to make sure he and his court are not being asked to enforce an illegal or unfair contract" (Klein 1971: 628). Klein contends that most small claims judges are not very knowledgeable in consumer law, much of which is of recent origin. He proposes that a new court designed as a consumer forum and staffed by judges who are experts in consumer law be established.

Like Klein's study, the first large-scale, nationwide study of small claims court focused on the consumer plaintiff. The major research question was whether or not small claims courts could "really serve as a means of redress for a large number of consumer grievances" (Small Claims Court Study Group 1972: 15). The Small Claims Court Study Group (SCCSG) was an interdisciplinary team of researchers in Cambridge, Massachusetts, sponsored by the Center for Auto Safety, an organization that had already attempted to get dissatisfied automobile owners to use small claims courts. Two hundred volunteers in forty-two states participated in the study using a list of questions provided by the SCCSG as a data gathering guide. The questions covered such topics as claim limit, attorney representation, restrictions on users, availability of legal aid, location and hours of court, filing procedures and cost, and default and collection procedures. In the Boston area, the researchers observed the courts

over a two-month period and interviewed plaintiffs by phone from the previous fiscal year. The SCCSG concluded that "For the vast majority of American consumers, small claims courts are either unavailable, unusable, or invisible" (1972: 21). They found, as did Pagter et al. (1964) and Moulton (1969), that the principal users of the court were not the poor, but businesses and landlords. The courts had become, in effect, collection agencies. Litigants had difficulty obtaining adequate knowledge about how to use the courts. They also had problems obtaining information on how to collect judgments from corporations or landlords. The Group also concluded that lawyers decrease the court's informality and that the judges' familiarity with certain corporations and their lawyers prevents them from being impartial. The report makes a number of recommendations for equalizing the chances of individuals in small claims court. Publication of instructional booklets outlining the procedures of the court as well as employment by the courts of paralegal advisors to answer any questions are recommended. Implementation of evening and Saturday sessions to make the courts more accessible to wage earners is also suggested. In order to allow the judge to devote more time to each case, it was proposed that case loads be lightened and the number of judges increased. Other recommendations included a voluntary arbitration option and discouragement of presence of attorneys in small claims court.

In 1972 the National Institute for Consumer Justice also published a report with the same concern as the SCCSG report--consumer plaintiffs. The Institute subcontracted with researchers in five cities: Detroit, Boston, Ann Arbor, Los Angeles, and Philadelphia. In each of these cities the researchers examined records and either sent questionnaires to or interviewed plaintiffs (response rate varied from slightly less than 30 percent in Philadelphia to

slightly less than 50 percent in Los Angeles). The authors concluded that small claims courts are a very useful, speedy, and inexpensive method of redressing consumer grievances. The Institute's report, like Moulton's earlier study in California, also raises the problem of the large number of default judgments in small claims court. In the report two reasons are given to explain the high default rate: many defendants may have valid defenses but consider their assertion unnecessary, while other defendants may have failed to pay, as Caplovitz (1974) found in a study of defaults, because of marital or other problems unrelated to the transaction brought to the court.

The most recent and most comprehensive study of small claims court was published in 1978 by the National Center for State Courts, a nonprofit organization that works with state judicial systems to improve courts at the state and local level (Ruhnka et al. 1978). Fifteen small claims courts throughout the country were selected for study on the basis of variation in such criteria as maximum allowable claim, permissibility of attorneys, and use of arbitrators. Large cities were overrepresented in this sample (New York, Washington, D.C., Minneapolis and Dallas) and no courts were selected in the South. Interviews were arranged with judges, and 500 cases were randomly selected from all small claims cases in each court. The records of these cases were examined and questionnaires sent to both plaintiffs and defendants (30 percent return rate for plaintiffs; 10 percent for defendants--a rate so low that results were not included in the report). This study revolved principally around policy questions such as

- Should collection agencies be prohibited from using small claims courts?
- Should lawyers be prohibited?
- What are the costs of using small claims courts?
- Are evening and Saturday sessions useful?

The study also was concerned with discovering the kinds of problems faced by the litigants in using the courts and in collecting judgements.

Ruhnka et al. admit that even after their study, they still did not know very much about defendants, nor did they know why almost one-half of all defendants never appeared to defend a claim against them (1978). Despite this fact, Ruhnka et al. conclude that small claims courts "were meeting the goals of speedy and inexpensive justice far better than the previous literature led us to expect" (1978: 189) and that the courts "are working very well for many litigants at a cost to the public below that projected for alternative programs" (1978: 198).

A few small claims court researchers have examined the relationships among small claims court participants. In a study of a New York City small claims court, Sarat (1976) examined the connection between types of litigant relationship and choice of type of dispute resolution. In the New York court litigants were given a choice between arbitration and adjudication. The arbitrators are lawyers, but not judges, and the process is to be therapeutic rather than judgmental. Sarat hypothesized that the greater the relational distance between litigants, the more likely the parties are to employ formal, "all or nothing" procedures to deal with disputes. His hypothesis was confirmed by the data--only 7 percent of those who had a long-term prior relationship chose settlement by adjudication. Smith (1970) examined racial discrimination in an Illinois small claims court and used several measures to examine whether the court is biased against blacks in its daily operation. He concludes that it is not. Dellinger (1972) was concerned with describing the relationship among participants as it was manifested during small claims court trials in Los Angeles small claims court. He did not find defendants to be intimidated into silence,

as suggested by Moulton's observational study of a California court (1969). Instead, he found that 40 percent of the defendants were articulate in defending themselves. Despite this fact, 85 percent of the defendants lost their cases. Dellinger does suggest the possible usefulness of the concept of "insiders" and "outsiders" to explain the high rate of plaintiff success in small claims courts. He proposes that judges view plaintiffs as "insiders" and assume that they have a valid claim. In a similar way, McFadgen (1972), part of the SCCSG, postulates a basic communication problem to explain the disadvantages faced by many defendants. This communication problem arises because nonattorneys are "outsiders" insofar as they do not understand the direction of judicial questioning, nor are they familiar with the legal framework of the dispute. Problems also occur because of the intimidating atmosphere of the courtroom and because of the time constraints placed on the judge.

Yngvesson, an anthropologist, and Hennessey, an anthropology student, have also summarized the small claims court literature (1975). In addition to presenting the methods and findings of the various studies they have questioned several of the assumptions on which the court is based. They question whether claims for small amounts of money and claims by poor people are always simple claims that may be disposed of quickly. They are also skeptical of the assumption by the judges that all claims filed are legitimate. Yngvesson and Hennessey view the judge's role as particularly problematic in small claims court, especially in courts where judges are expected to be conciliators as well as adjudicators. A conciliator is ideally an active participant in determining the true nature of the dispute and in helping the parties reach a mutually acceptable resolution. To be successful conciliation requires time which is usually not available in court. Furthermore, judges, accustomed to the more

passive role of adjudication, are generally not well suited for conciliation (Yngvesson and Hennessey 1975).

Research on small claims courts has documented the types of persons and organizations involved in the court based on the limited information available in court records (high number of business plaintiffs, high number of individual defendants), has shown high default rates, and has suggested problems faced by unrepresented litigants and by judges. Previous research has also shown clear evidence that plaintiffs almost always win, many by default. Since the information available in records is sparse and that from questionnaires and interviews incomplete, studies have failed to produce detailed information on users, particularly defendants (Yngvesson and Hennessey 1975), and on the actual process of interaction within the courtroom.

Statement of Research Problems

The primary purpose of this study of Leon County small claims court is to explore questions raised in the anthropological literature on the nature and effectiveness of the dispute settlement role of courts in the United States. A secondary purpose of the study is to address some of the questions on litigants and courtroom behavior unanswered by other studies of small claims courts. There is a need to look beyond isolated statistics on users of the court and to explore in detail the relationships between participants and the interaction that unfolds in the courtroom. Cross-cultural studies of law have revealed that different kinds of relationships and different kinds of conflict require different types of dispute settlement. The critical issues to explore in small claims court are what procedures are used and whether these procedures work equally well for different litigants and different types of cases. A study of small claims court may also be used to address broader questions raised in the anthropo-

logical literature contrasting law in tribal and village societies with law in the United States. Have courts in the United States rejected the problems of the average citizen? Has there been an increasing reliance in the United States on formal institutions? Are formal institutions in the United States truly biased toward the rich and powerful?

As a vehicle for describing the behavior and attitudes of all the participants in small claims court, cases in this study are presented in terms of Nader and Todd's (1978) components of a dispute--the item in dispute, the parties involved in the dispute, the way in which the dispute is presented and handled in a public forum, and the outcome and its enforcement. Because these components are believed by Nader and Todd to have universal applicability and because they have been used as a framework for collecting data on disputes around the world, their use will facilitate comparison between this study and other anthropological studies of dispute settlement. For this study, Nader and Todd's components of a dispute have been translated into a series of questions:

Who uses the court and for what purposes? Critics have argued that small claims courts are dominated by corporations, government agencies, and attorneys (SCCSG 1972; Moulton 1969; National Institute for Consumer Justice 1972; Pagter et al. 1964). These writers have stressed the need for handbooks or other tools to help equalize the chances of the unrepresented, individual litigant in small claims court, but before these can be developed effectively, it is necessary to know who these people are and what kinds of cases they bring to the court. Data need to be gathered on their demographic, social, economic and racial characteristics; on their perceptions of the court; on their descriptions of the dispute; and on the strategies they have developed for dealing with the court and with disputes in general.

What is the relationship between parties? Anthropologists and others, for example Sarat (1976), consider the type of relationships between litigants and types of claims brought by litigants to be crucial variables for determining the appropriateness and effectiveness of different dispute settlement mechanisms. In the Leon County court, parties with a long-term or multiplex prior relationship and parties of equal rank may be expected to choose negotiation or conciliation over adjudication.

What is the relationship among court personnel? What attitudes do they bring to the process? In order to gain a comprehensive understanding of the court, it is necessary to study the attitudes and behavior of court personnel as well as litigants. As Nader (1972) has urged, anthropologists must begin "studying up"; that is in order to understand social relations in complex societies, they must begin to include the powerful as well as the powerless in their research schemes. The behavior of judges and other court personnel is not only influenced by the values and attitudes they bring to the court setting, but it may also be influenced by persons with whom they have ongoing relationships. Mileski (1971) has suggested the importance of the ongoing relationship between judges and lawyers in lower criminal court. The prosecutor weighs his desire to prosecute cases against his desire to maintain a positive relationship with the judge, public defender, and other attorneys who bring cases to court. Mileski (1971) found that all these individuals are members of a "team" that maintains the smooth operation of the court. A similar type of team may be found in small claims court where preliminary research indicated that many attorneys appear repeatedly, especially those representing businesses.

What steps do the parties take to resolve the case before filing? At what point do they decide to file in court? According to Sarat (1976) and Domanskis

(1976) third parties are called upon to settle disputes only after other dispute processing methods have failed. Sarat (1976) in his study of a New York small claims court found that persons with prior relationships were most active in prelitigation dispute resolution attempts. This finding is consistent with the general hypothesis raised by anthropologists (Gluckman 1955; Nader and Todd 1978) that persons with ongoing relationships are more likely to resolve their problems informally than formally. Thus, in Leon County individuals with a long-term prior relationship may also be expected to attempt to resolve their problems through informal channels, such as networks of friends or kin, before resorting to a court suit.

What is the nature of the interaction between the court and the litigants?

Courtroom interaction may reveal patterns of behavior that affect the outcome of cases as found by Mileski (1971) and Brickley and Miller (1975). This kind of socialization behavior may work to the detriment of the defendant in small claims court who may, in imitation of the silence of other defendants before the judge, fail to ask a crucial question or to voice a valid defense. Judges may also employ different styles (e.g., conciliatory versus adjudicative) with different types of litigants or in different types of cases.

What happens to cases after they are brought to court? As anthropologists have frequently pointed out, bringing a problem to a public forum is often not the end of the conflict (Bohannon 1957; Nader and Todd 1978; Moore 1978). The effectiveness of a legal forum may be evaluated on two levels: its ability to enforce its decision and its ability to resolve the problem brought to it. In small claims court enforcement may be examined in terms of collection

of judgments issued by the court. Examination of the court's dispute resolution function requires interviews with litigants after the case has been handled by the court.

As an adjunct to the questions presented above, the specific studies in the anthropological and small claims literature suggest several hypotheses to be tested or requiring further verification with respect to the general aims of this study:

1. The people who use the court will come from widely varying backgrounds, will differ in their perceptions and expectations of the court, and will use varying strategies to maximize their chances in court. Despite the variety of individual responses, it is expected that certain patterns will emerge:

- a. Socioeconomic status (as defined by occupation, residence, income, and education), race, ethnic group, and sex will be related to the frequency with which people bring cases to court and win cases. Higher status persons will bring more cases than lower status persons and lower status persons will have more cases filed against them than higher status persons (cf. Black 1976).

- b. Higher status people will be more likely to respond to a summons to appear in court than lower status people (Moulton 1969).

- c. Business organizations (e.g., corporations, partnerships) and service professionals (e.g., physicians, attorneys) will be more likely to bring cases to court and more likely to win (Black 1976), whereas private individuals will be more likely to have cases filed against them than organizations.

- d. Plaintiffs will be more likely to win than defendants (cf. Dellinger 1972; Hollingsworth et al. 1973; Pagter et al. 1964).
 - e. Litigants represented by attorneys will be more likely to win than unrepresented litigants (cf. SCCSG 1972).
2. Litigants who have ongoing, especially multiplex, relationships with each other will be more likely to choose informal means of dispute settlement than litigants who are strangers (cf. Nader 1969b; Gluckman 1955; Collier 1979), and people of equal rank will be more likely to compromise than people of unequal rank (cf. Black 1976; Starr and Yngvesson 1975). Before filing in small claims court, people with these kinds of relationships will have attempted to resolve the dispute by more informal means. Within the small claims court these people will be more likely to choose negotiation or conciliation over adjudication.
 3. Within the small claims court different kinds of litigants and different types of cases will be handled differently by judges and other court personnel. As Black (1980) found for dispute settlement by police, different styles (e.g., penal, conciliatory) may be used by judges for different types of cases.
 4. Higher status litigants (businesses, those represented by attorneys, those of higher socioeconomic status) will be more likely to have decision of the court enforced in terms of a collection of judgment than lower status people.

The chapters that follow, with the exception of Chapters 2 and 3, are organized around the questions and hypotheses presented in this section. The methodology of the study is detailed in Chapter 2. Chapter 3 describes the legal and social setting in which small claims courts in general and the Leon

County court in particular have evolved. This information is considered necessary for understanding the present-day functions of the court. In Chapter 4 the characteristics of the individuals and businesses who file claims in the Leon County court are examined. Whether these individuals and businesses represent a broad range of types or whether they disproportionately represent particular segments of society is explored. Typical relationships between litigants are also described in Chapter 4. The focus of Chapter 5 is the legal participants (judges, attorneys, and clerks) in the Leon County court. The attitudes, values, and behavior of each of these groups in reference to the others as well as in reference to the litigants are described. Chapter 6 is concerned with the small claims process. It begins with a description of the steps litigants take before filing claims and concludes with an account of what happens to disputes after they are handled by the small claims court. In this chapter the interaction of court personnel and litigants is described and analyzed as it unfolds during both pretrial hearings and trials. The final chapter summarizes the conclusions from the data analysis chapters (Chapters 4-6) and examines the Leon County court in its wider contexts. The court is viewed in its historical context, in light of previous research on small claims court, and in reference to anthropological theory and concepts on dispute settlement. In Chapter 7 recommendations for improving the functioning of the court are made based on the findings of this study. The chapter concludes with suggestions for future research.

CHAPTER 2 METHODOLOGY

Research in modern, post-industrial societies requires modification of traditional anthropological methods and concepts developed for research in small-scale societies. Methods from other disciplines with a longer history of research in complex societies may be fruitfully borrowed. The concept of holism evolved from attempts by anthropologists during the early part of this century to study all aspects of a particular society, including its history and physical environment as well as elements of its culture such as kinship, politics, economics, religion, and art. Over the years anthropologists have become increasingly specialized, in part, because of the increasing complexity of the societies they have studied. Within their specialty, however, anthropologists attempt to maintain the holistic approach, recognizing that the various aspects of a culture influence one another and cannot be understood in isolation. The anthropological approach also recognizes that many important questions may arise during the research process. In contrast to many other social scientists studying modern societies, anthropologists generally do not limit their studies to measurement and analysis of variables determined to be important before actual research is begun. Instead, the anthropological approach is characterized by open-ended research questions and multiple methods.

Anthropology's most characteristic method, participant observation, must also be modified for a study in the United States. Many activities in

small-scale societies are public, and by simply being there the anthropologist is able to record much valuable information. Malinowski describes how he gathered information in a Trobriand Island village in the early 1900s:

As I went on my morning walk through the village, I could see intimate details of family life, of toilet, cooking, taking of meals; I could see the arrangements for the day's work, people starting on their errands, or groups of men and women busy at some manufacturing tasks. Quarrels, jokes, family scenes, events usually trivial, sometimes dramatic but always significant, form the atmosphere of my daily life as well as theirs. It must be remembered that natives saw me constantly every day, they ceased to be interested or alarmed, or made self-conscious by my presence. (1961:7)

Because Malinowski was an outsider, he was also permitted to ask questions that would have been considered inappropriate and rude if asked by members of the village. In contrast to behavior in small-scale societies such as the one described by Malinowski, much behavior in a society such as the United States occurs in private and by telephone and writing. As a member of the society under study, the anthropologist in the United States must also observe certain social conventions and is not able to assume so easily the role of the "nosy outsider" as Malinowski was in the Trobriand Islands. Thus, it is frequently necessary for the anthropologist in modern societies to take a more indirect approach to data gathering. Interview schedules and questionnaires are frequently the only means of gathering data on behavior, so much of which occurs in private.

There are also advantages to research in complex societies. Complex societies produce a wealth of written records which may be used in a number of ways. They may be used, as ethnohistorians have, to study changes within an institution or society over time. They may also be used to test hypotheses developed through participant observation or as a sampling frame for interviews or observation. Sampling of, for example, a large number of legal case records

further provides the researcher with a means of measuring the representativeness of cases studied in-depth. This kind of check is especially important in studies of formal institutions in modern societies where there is usually nothing linking the numerous clients to one another except the institution and where many clients use the services of the institution only once. It is thus very difficult to assess the representativeness of those observed and interviewed without knowing the range and proportion of different types of clients.

Concepts and Definitions

This study is concerned not with an examination of law as an abstract set of rules, but with description of the social evolution and handling of disputes brought to a small claims court. In order for a case to be a dispute, it must be contested. Much of the work of the court does not involve disputes, but entails the routine processing of uncontested debts. Gulliver (1969) defines a dispute as a disagreement between parties that stems from the perception of an individual or group that rights have been infringed. A disagreement becomes a dispute when it is raised in a public arena. Thus, two distinguishing elements of a dispute are disagreement between parties and use of a public forum such as a court. The dispute may be only one stage in a conflict between groups or individuals that has begun years before it reaches a public forum and that may continue for years afterward (Nader and Yngvesson 1973).

Handling of the dispute in a public forum may take one of three basic forms: negotiation, mediation or conciliation, and adjudication. Gulliver (1963) describes negotiation as a purely political process characterized by the lack of third party intervention. In negotiation in small-scale societies each disputant is assisted by supporters, and there are usually not gross discrepancies in power between the two sides. In these cases, compromise is the most common result

and the ultimate determining factor in the outcome is relative strength of the parties and not application of a particular standard or rule. Compromise is also frequently the result of mediation or conciliation. Although the terms mediation and conciliation are frequently used interchangeably in the dispute settlement literature (for example, Collier 1975; Nader and Todd 1978; Eckhoff 1966; Black 1980), they have slightly different meanings within the field of law. According to Black's Law Dictionary, conciliation is "the adjustment and settlement of a dispute in a friendly, unantagonistic manner, used in courts before trial with a view towards avoiding trial and in labor disputes before arbitration" (1979: 262), whereas mediation is "Intervention; interposition, the act of a third party intermediating between two contending parties with a view of persuading them to adjust or settle their dispute. Settlement of dispute by action of intermediary (neutral party)" (1979: 885). The difference between conciliation and mediation is the degree of participation by the third party. In mediation the third party takes a more active role in helping the disputants reach a settlement than in conciliation. The conciliator may simply urge the parties to try to settle their conflict through negotiation. In contrast, the mediator takes a stronger approach, and may offer solutions to the dispute. Although these solutions are only suggestions and cannot be enforced, the mediator may threaten to ally himself with one of the parties if the other does not give in (Eckhoff 1966). Unlike the decision of the mediator, the decision of the judge is binding. The judge's task is not to try to reconcile the parties by helping them reach a mutually acceptable solution to their conflict as is the task of the conciliator or mediator. Rather the job of the judge is to determine which party is right according to the law (Eckhoff 1966; Nader 1969). The mediator looks forward to the future of the relationship between parties,

whereas the judge looks back to precedent and statute (Eckhoff 1966). Although small claims court is formally an example of adjudication, conciliation, negotiation, and occasionally mediation may be observed within the context of the Leon County court.

Several other concepts need to be defined for this study. Definitions of multiplex, simplex, and ongoing relationships are necessary for testing the hypotheses about types of relationship and preference and effectiveness of different dispute settlement mechanisms. Multiplex relationships are personal relationships. In contrast, simplex relationships, in their most characteristic form, entail a simple business or economic relationship. In simplex relationships the participants may not even know each others' names, whereas in multiplex relationships people are linked in many different ways. Multiplex relationships are more common in small-scale than in complex societies, but examples of multiplex relationships may be found in all societies. For instance, in the United States kin, friends, neighbors, and coworkers are each linked in multiplex relationships. Either multiplex or simplex relationships may be ongoing. Ongoing is defined as the expectation by the parties that the relationship will be continued in the future. The concepts of winning and enforcement also require some explanation. For this study of small claims court winning is defined as receiving a judgment from the court and enforcement as having the judgment satisfied.

Throughout this study, it has frequently been necessary to use native terminology of professional legal practitioners to describe the formal workings of the court. The meanings of these terms for the legal profession are very specific and are frequently at variance with their everyday meanings. In order

not to break the flow of the text by defining these terms as they appear, they are defined in a glossary at the end of the document.

Research Methods and Techniques

This study entailed a combination of qualitative and quantitative research methods. Application of a wide range of methods to one setting increases the overall credibility of the study by providing a means of cross-checking and expanding information (Pelto and Pelto 1978). Quantitative methods were applied to data in the court records and to quantifiable aspects of pretrial hearings. They were used to supplement more descriptive, traditional ethnographic methods of informant interviewing and observation. Quantitative methods are valuable insofar as they are able both to support hypotheses generated through ethnographic field work and to "reveal unexpected facets of the field situation just because, compared to intuition, they are less under control of our prior expectations" (Johnson 1978:46). Qualitative methods, on the other hand, are necessary to explain what the numbers generated from quantitative methods mean in terms of human behavior. The specific methods and techniques used in this study include event analysis, observation, interviews and questionnaires, network analysis, statistical tests, and participant observation.

Event Analysis

Event analysis has most commonly been used by anthropologists in connection with major public events such as fiestas, religious ceremonials, and market days (Pelto and Pelto 1978) but may also be fruitfully applied to courtroom events. Not only are these occasions relatively accessible to anthropologists, but because these events mirror important social relations in a society they yield a wealth of information within a short period of time. In

Leon County small claims court, event analysis was based on the categories of information detailed by Peltó and Peltó (1978): kinds of persons involved in the action, ways in which participants were grouped, sequences of action, spacing of participants, symbols of status, and groups and individuals with the most decision-making power. These kinds of information were gathered during pretrial hearings and during hearings of contested cases.

In anthropological studies of law, the case study method may be viewed as a particular type of event analysis (Peltó and Peltó 1978), and has been used both as a data gathering technique and a unit of analysis (Epstein 1967). The case study method originated in medical and psychological research, "where it refers to a detailed analysis of an individual case that explicates the dynamics and pathology of a given disease" (Becker 1967:232). It has become a major mode of social science analysis and has been applied to organizations, communities, and individuals. The case study method has "played an important role in every anthropological study of law since the pioneering work of Llewellyn and Hoebel" (Collier 1975:139) and "the thorough examination of detailed case material is likely to be the most rewarding procedure, as it has already been in the best literature" (Gulliver 1969:13).

In this research forty-two contested cases--hence, actual "disputes"--were selected for extensive study by quota sampling over a period of a year and a half. In quota sampling, characteristics of the general population are identified and then cases are chosen to match these characteristics. A simple random sample of cases from the records for 1979 was drawn to determine the range of cases filed in Leon County small claims court on the basis of several characteristics. These characteristics included type of case (for example, business vs. business, individual vs. individual), type of litigant

(for example, sex, race, socioeconomic status), and attorney representation. Cases were then selected for extensive study based on their representativeness in terms of these variables. Cases selected were observed during both pretrial and trial hearings, participants were interviewed, and court files were examined. Capsulated sketches of each of the case studies used as examples in the text are given in Appendix A so that the details of a case do not have to be repeated each time the case is mentioned.

Observation

Approximately 85 percent of all cases filed in Leon County small claims court are resolved during pretrial hearings. Thus in order to achieve a well-rounded description of the court and its functions, it is necessary to sample those cases as well as the unresolved (i.e., contested) cases that are scheduled for formal hearings. Approximately 800 pretrial cases were observed over a year and a half. All cases scheduled for a particular time and day were observed (from 30 to 70). An effort was made to observe approximately equal numbers of cases before each of the three county judges. Because cases are processed very rapidly during pretrial hearings (as many as 60 to 70 per hour), a precoded observation form was developed and used (see Appendix B). Information recorded on these forms included general case data such as type of case, item, dollar value of disputed item, and outcome. Data on litigants and attorneys not available from case records were also recorded including sex, race, and appearance (dress, grooming, approximate age). These data are important as indicators of the socioeconomic status of the participants. Because one of the goals of the study is to describe how disputes are handled by the court, verbal exchanges between the judge and the parties were also recorded as completely as possible on the observation form. Several pretrial

hearings were observed during the course of developing and testing the observation form. These cases were excluded from the final analysis. Thus the analysis is based on 549 instead of 800 cases. A trial observation form for the forty-two contested cases was also developed and used (Appendix B). Trials occur much less rapidly than pretrials and thus more information may be recorded for each case. In addition to the categories described for the pretrial observation form, the trial observation form included space for mapping physical location of participants. Speech and demeanor of participants were also noted on trial observation forms as well as the amount of time (measured in minutes) each party spoke.

Interviews and Questionnaires

Plaintiffs, defendants, lawyers, and judges in the cases selected for intensive study were interviewed. Legal personnel were interviewed informally in the court and litigants were interviewed in their homes. Closed response questions -- those which require people to choose between alternative answers to specific questions -- were not used. Instead, people were encouraged to describe their experience with small claims court in their own terms, expressing their particular values, strategies, and goals. Standardized interview guides in which information desired from each respondent has been tentatively translated into questions were developed (Appendix B). Information was gathered in several broad categories: description of dispute, including assistance sought and from whom, relationship of parties, feelings about the court, practical problems with the court, suggestions for reform, and dispute handling in general. General or "grand tour" questions (Spradley 1979) such as "could you start at the beginning and tell me how the problem between you and 'x' started?" were used in combination with more specific questions such as "Did

you see a lawyer?" and "How much time did you spend going to court?" Litigants were encouraged to talk freely, and questions were generally asked only to clarify points or when there was a pause in the informant's oral account. The order of questions asked also varied according to litigants. For example, some litigants appeared to be overwhelmed and uncomfortable with general, open-ended questions. Instead of responding with a rush of details as other litigants did, they responded with silence. In these instances, more specific questions were asked first. At the end of the interview, litigants were asked questions about marital status, age, education, place of birth, occupation, and occupation of spouse. This combination of different types of questions was used to gather two different kinds of information. The open-ended questions were used to elicit the litigants' view of the dispute and the court, whereas the more specific questions (for example, did you talk with a lawyer about the case?) were used so that this study would be comparable with other studies of small claims court.

Data on attorneys, judges, and other legal personnel in Leon County small claims court were gathered primarily from informal conversations. Cases are frequently cancelled at the last minute which leaves judges, attorneys, and clerks with free time before the next case. These short blocks of time were found to be ideal times to talk informally to legal personnel both about the court in general and about specific cases. Judges were especially candid during these periods. They patiently explained legal issues and detailed how they intended to rule on particular cases. The judges also discussed their other duties and their thoughts toward the law and the court in general. These conversations were enormously helpful in piecing together the judges' perspectives on the court and the litigants.

The data base on legal personnel and to a small extent on litigants was supplemented by analysis of interviews and questionnaires administered by the Office of the State Courts Administrator under the Florida Supreme Court in its statewide study of thirteen small claims courts. The study included small claims courts in Bradford, Brevard, Collier, Flagler, Lee, Marion, Martin, Okaloosa, Orange, Pinellas, Sarasota, Taylor, and Washington counties. All judges (42) and clerks (13) were interviewed in these courts by personnel from the Office of the State Courts Administrator. These interviews consisted primarily of open-ended questions designed to elicit respondents' attitudes toward the court and their perceptions of any problem areas. Judges and clerks were also asked about proposed reforms such as night court and use of paralegals to assist litigants. Both judges and clerks were asked for suggestions for improving the functioning of the court. A random sample of 250 attorneys who had filed in one of these thirteen courts was sent a questionnaire. The questionnaire asked for information on type of clients, type of practice, opinions toward small claims procedures, attitudes toward litigants and court personnel, and suggestions for improving the process. The response rate to this questionnaire was 50 percent. Two hundred and fifty randomly selected litigants were also sent questionnaires by the Office of the State Courts Administrator. They were asked about their attitudes toward the court as well for basic demographic information. Approximately 25 percent of the plaintiffs and 10 percent of the defendants responded to the questionnaires.

Network Analysis

Network analysis was applied to the interview and observational data on small claims court participants. This method, which entails delineation of the social relationships in which each person is embedded instead of analysis of an enduring system of groups (Boissevain 1974), is especially applicable to complex societies, where individuals interact in a wide range of relationships. In this research, the social networks used by plaintiffs to find out about small claims courts are described as well as the networks mobilized by litigants in an attempt to win their cases. Attention is also given to the content of the advice about small claims court litigants receive from others. For the forty-two cases selected for in-depth study, the question of the relationship between case outcome and the use and type of network is explored. For example, Boissevain (1974:5) has suggested that people in conflict "won not so much because they were right, that is, had merely the most telling argument or defended more important values than other opponents, but because they have access to influential allies who are able to bring pressure on their rivals." Collier (1975) and Gulliver (1971) have hypothesized that incorporation in powerful networks may influence an individual's decision to seek a legal remedy in the first place. Legal personnel, as well as litigants, are embedded in networks that may influence their behavior in regard to particular cases. These networks of legal personnel are also described and examined for the possible influence such networks might have on behavior observed in the courtroom.

Quantitative Techniques

In addition to cases selected for observation and for in-depth study, a simple random sample of case records from the previous year (1979) was drawn. The size of the sample was 361 cases out of a population of 7,000 representing a

confidence level of 95 percent (Hendel 1977). The sample size was reduced to 291 after it was discovered that county civil cases (claims between \$1,500 and \$2,500) and eviction actions were filed with small claims. These cases were excluded from analysis. The court records were sampled for two major reasons: in order to insure comparability between this study and other studies of small claims courts which have been structured around data available in the records and to provide a framework for the more ethnographic aspects of the study. Sampling of the records provides a broad overview of the types of cases brought to the court which cannot be gained through the case study approach. Case studies are of necessity limited to a small number of cases. Court records were used to test hypotheses suggested by others about the types of litigants who bring cases to court and those who are most likely to win. Information from records was gathered about the following: names and addresses of litigants, type of case, item in dispute, amount of claim, whether claim is contested, winner, judge, business scope and type of litigants, attorney representation, sex of litigants and attorneys, collection of judgment, date of original incident, date of filing, date of hearings, and date and type of judgment (see Appendix B). The addresses of the litigants were matched to census tracts and used as a measure of socioeconomic status. Frequencies were tabulated for nominal level variables, such as item in dispute, and averages and ranges were calculated for interval level variables, such as amount of claim and amount of time between steps in the small claims court process. Nonparametric tests of association were then used to test relationships between variables.

Participant Observation

Participant observation within both the court and the community was used throughout the year and a half study period. The office of the deputy clerks proved to be an unexpectedly rich setting for learning about the court. During the field research, I spent approximately 200 hours in this office. My primary function was to complete the information forms for the case file sample, but I also spent time listening and observing and talking informally with the office staff. As time went on, I became increasingly interested in the attitudes and behavior of the members of this group and saw them as a critical, although frequently overlooked, part of the court.

Within the community, participant observation was used to discover means other than the court that people use in an effort to settle dispute. People in the researcher's personal network were used. These people include coworkers in a university research center, friends and acquaintances acquired from over five years residence in the community, and friends and relatives of the researcher's husband who reside in the county. Since information gathered through these sources is intended to be merely suggestive and supplemental to the main focus of the project on small claims court, no attempt at sampling was made.

The methods and techniques described in this chapter were selected to yield information on the nature and effectiveness of the dispute settlement role of a lower civil court in the United States. These methods were chosen specifically as a means of gaining first-hand knowledge of the day-to-day operations of the court, since this kind of information is crucial for understanding the court's role in the community. Before the specific findings

regarding the court and its participants are presented, it is necessary to describe the context in which the court has evolved. Thus, the next chapter is devoted to detailing the social and legal setting in which the court is found.

CHAPTER 3 BACKGROUND AND SETTING

Before analyzing the results of this study, which examines a single small claims court during the period from January 1980 to June 1981, it is important to present the historical and social contexts within which the courts in general and the Leon County court in particular have developed. The Leon County small claims court has been shaped and influenced by many factors, some national and some local. Like all social institutions, the court does not exist in a vacuum but is part of many wider historical and social patterns. In this chapter, some of these patterns will be described. First the local setting will be presented: Leon County's history, economy, and demographic structure will be outlined. Next attention will be given to the larger legal settings of which the court is a part. Aspects of the American legal culture that have a bearing on the development of small claims court will be presented, and the evolution of the court will be traced briefly on national, state, and local levels. Lastly, the current state court structure will be described and the current formal organization of the small claims court in Leon County presented.

The Local Setting

Leon County, in northwest Florida, is the site of the capital of one of the fastest growing states in the nation. In 1980, with a population approaching 10 million, Florida had the second largest population in the South and the seventh largest in the United States (U.S. Bureau of the Census 1980). In the South its population was exceeded only by that of Texas. Much of this growth has occurred in the southern and central portions of the state, which attract large

numbers of tourists and retirees. Leon County, however, has experienced a much higher rate of growth than other northern counties. Unlike other southern states, Florida has a diverse population, including many northerners and Latin Americans. As the center of state government and the location of two state universities, Leon County has also attracted a varied population, particularly in recent decades.

Much of the population growth in southern and central Florida has occurred since World War I although there were small settlements prior to this time. Settlement of much of northern Florida began nearly a century earlier. In 1821 when Florida became a United States territory reports of abundant, cheap land brought slave-holding cotton planters from worn-out farms in Maryland, Virginia, the Carolinas, and Georgia into the northern part of the territory. The Florida territory was virtually unpopulated except for the Seminoles who had begun to filter into Florida from neighboring states in the late 1700s. Tallahassee, named territorial capital in 1823, became the center of slave trade for Florida with Leon County the center of plantation agriculture. Planters bought thousands of acres in Leon County and became leaders in business, banking, and politics as well as agriculture (Paisley 1968). By 1860 agriculture products, especially cotton, had become the economic mainstay of the county. In that year Leon County produced 16,686 bales of cotton -- 5,839 bales more than its nearest Florida rival, Jefferson County (1968:7). Most of the county's population of 12,343 (including 9,089 Negro slaves, 3,194 whites, and 60 free Negroes) were dependent on agriculture. The remainder of Leon County's residents were employed as tradesmen, mechanics, teachers, lawyers, preachers, state officials, and lumbermen. Although production declined, cotton growing continued during the Civil War despite

difficulties in marketing the crop through the blockade. Most of the activity in Florida during the war was along the coast. Damage to the interior, including the Leon County plantations, was prevented by the Battles of Olustee and Natural Bridge.

After the Civil War, most Leon County planters tried to revive the old plantation system. Most former slaves remained on the plantations, working for wages in the form of a portion of the crop. Many also became tenant farmers, pledging various amounts of their cotton crop as rent for the land they farmed. Tenant farmers were drawn into an ever increasing cycle of debt by buying mules, tools, and food from the landowner on credit. At the end of the year, a tenant's debt commonly exceeded his income and was thus carried over to the next year when the debt became even higher (Paisley 1968). For fifteen years after the war, the number of blacks in Leon County increased rapidly as many former slaves came to Florida from Georgia and South Carolina, where destruction of plantations had been widespread. By 1870 there were 12,341 Negroes and 2,895 whites in the county. The number of Negroes in the county increased to 16,840 by 1880 and the number of whites decreased slightly to 2,822. In 1880, 41 percent of Leon County's tilled land was in cotton -- more than any other Florida county (Paisley 1968).

After 1880 cotton production in Leon County began to decline. The lack of railroad connections, the steady fall in cotton prices, the spread of the boll weevil, and the belief among planters that an era had ended all contributed to this decline (Tebeau 1971; Paisley 1968). Increasing numbers of planters began selling entire plantations, often for as low as a few dollars an acre. Many of these plantations were sold to wealthy northern industrialists who were not interested in farming, but who were interested in having large tracts of lands on

which to hunt. Between 1900 and 1950 the amount of land in the county held for game hunting increased 900 percent (Paisley 1968). Most of Leon County's new, large land owners were casual, part-time residents, uninterested in the affairs of the county and the state.

The conversion of the plantations from cotton to game had a profound effect on the county's economy and population. Tenant farmers were not allowed to engage in any activities that might interfere with the propagation of quail (Paisley 1968). Cultivating large fields, raising livestock or poultry, and building fences were all prohibited. Other land in the county was also being closed to farming by the expansion of Tallahassee, the county seat as well as the state capital. In the southern part of the county the soil was poor and more suitable for forestry than for agriculture. Tenant farmers, the majority of whom were black, suffered the most from conversion of the plantations. Their opportunities became limited to jobs on plantations in the stables, around dog pens, on hunting wagons and in households. The black population in the county reached a peak in 1880 when blacks outnumbered whites 6 to 1. By 1890, however, blacks began to leave the county to work on railroads and phosphate mines to the south. Many blacks also migrated to cities in the North. In the early 1900s state government and the growth of two state universities, the Florida State Normal and Industrial College (now Florida A & M University) and the West Florida Seminary (now Florida State University), began providing some jobs for county residents. This growth in government employment gained momentum after World War II and by 1954 federal, state, and local government payrolls accounted for 40 percent of personal income in Leon County. By 1964 this figure had increased to slightly over 50 percent. By 1978 it had dropped to

slightly less than 50 percent (Tallahassee-Leon County Planning Department 1979a).

Growth in the economy was accompanied by growth in population. Leon County's population has grown steadily since 1930 (Table 3.1). Much of this growth has occurred in Tallahassee, the state capital and the only incorporated area in the county. Between 1970 and 1978, however, for the first time suburban portions of Leon County were growing faster than the city of Tallahassee. During this time Leon County was one of the faster growing counties in the nation (Tallahassee-Leon County Planning Department 1979b). This increase resulted from continued growth in government and university employment. In addition as South and Central Florida were becoming more densely populated, North Florida began to attract more people both from these areas and from other states (Winsberg 1981).

TABLE 3.1
POPULATION GROWTH

Year	<u>Tallahassee</u>		<u>Leon County</u>	
	Population	Average Annual Increase	Population	Average Annual Increase
1930	10,700	--	23,476	--
1940	16,240	5.2%	31,646	3.5%
1950	27,237	6.8%	51,590	6.3%
1960	48,174	7.7%	74,225	4.4%
1970	72,586	5.1%	103,047	3.9%
1980	90,000	3.0%	140,617	4.6%

Source: Tallahassee-Leon County Planning Department 1979b.

Leon County's population today is primarily urban. In 1978, 64 percent of the population was within the corporate limits of Tallahassee and 85 percent was within the Tallahassee suburban area. Ninety percent of the population was living on 10 percent of the land (Tallahassee-Leon County Planning Department 1979b). By 1978 the minority population (black and other nonwhite races) had decreased to 20 percent of the total population (University of Florida, Bureau of Economic and Business Research 1979). Leon County's population, because of the presence of two universities and a community college, has a disproportionate number of young people. In the fall of 1980 Leon County's population included 30,874 students, many of whom were from other parts of the state, particularly South Florida, the Tampa-St. Petersburg region, and Jacksonville. The median age of county residents in 1970 was 23.5 years (Tallahassee-Leon County Planning Department 1979b).

The per capita income in Leon County in 1977 was \$5,429, more than \$1,000 less than state figure of \$6,684 (Fernald 1981). The Florida counties with the highest per capita income are along the southern gulf and Atlantic coasts. Leon County's per capita income is, however, considerably higher than those of surrounding counties, which are heavily dependent on agriculture, forestry, or fisheries. In 1977 Gadsden County had a per capita income of \$2,838; Jefferson, \$3,154; and Wakulla, \$3,489 (Fernald 1981). Leon County's relatively high per capita income is explained by the high percentage of government employment. As noted in Leon County the government sector accounts for approximately 50 percent of all employment. The trade and service sectors account for 16 and 9 percent respectively while manufacturing and agriculture both play a minor role in the county's economy. During the recession of the mid-1970s the average annual unemployment rate in Leon

County at 4-5 percent was half that of the nation and much of the state (Tallahassee-Leon County Planning Department 1979a).

Leon County's original settlement and development based on plantation agriculture parallel the settlement and development of much of the southern coastal plain. Northern Florida is distinct physically and culturally from peninsular Florida and shares many of the physical and cultural traits of the two states immediately to the north, Georgia and Alabama (Patton, Purdum, and Unger 1981). Cotton and timber were the mainstays of the region's economy before the Civil War, just as they were in Georgia and Alabama. Agriculture and forestry are still the major components of the economy of many northern Florida counties.

The culture that developed in Leon County generally conforms to the plantation model of Southern culture described by Pearsall (1966) with its small but powerful ruling class and large group of Negro slaves. Even in areas of plantations, another model of Southern culture was evident, variously called the frontier model (Pearsall 1966), the plain folk model (Hill 1977), or the Cracker culture (Taylor 1970). Plain folks established small farms in the piney woods and hills. Their culture was characterized by self-sufficiency, independence, and distrust of strangers (Pearsall 1966; Taylor 1970).

Leon County, however, is unique and, although it shares a tradition with much of the South, it cannot today be classified as a typical southern community in the sense described by Arensberg (1955). To Arensberg the distinctive form of community in the South was and is the county. "Dispersed a day's ride in and out around the county seat, that community assembled planter and field- or house-hand from the fat plantations, free poor white or Negro from the lean hills and swamps, for the pageantry and the drama of Saturday

around the courthouse, when the courthouse, the jail, the registry of deeds, and the courthouse square of shops and lawyers' row made a physical center of the far-flung community" (p. 106). This model may still have some relevance to the counties surrounding Leon County where the population has remained low, where the people continue to depend on agriculture and forestry for their livelihood, and where stores are still located surrounding the central courthouse. Leon County, in contrast, is the location of Tallahassee, the capital of one of the fastest growing states in the nation, and as such has attracted many people with social, political and economic ties and interests outside of the county. On a typical Saturday in Leon County, the downtown area is deserted and people are likely to be found at one of the several suburban shopping malls.

The structure and function of community life in Leon County reflects changes that have occurred throughout America in recent decades. One of these changes is the reduction in contrast between rural and urban communities (Warren 1972). Chain stores (usually clustered in shopping malls), supermarkets, and branch banks are located in small towns as well as cities. The use of land is also similar, with the ideal pattern being single houses on relatively large plots of land. The rural community is no longer largely self-contained; members of all communities, including rural communities, are linked formally and informally to individuals who reside outside of the local area. The community structure has become more complex as new organizational forms are layered onto old (Arensberg and Kimball 1965). In the case of Leon County, a traditional agrarian economy has been supplanted by one based on government employment and on the trade and service sectors. The growth in state government and in the universities has brought new people and new ideas to the

community, but, as an examination of the court will show, in some ways Tallahassee remains a close-knit conservative community.

The Greater Legal Setting

This study of Leon County small claims court needs to be viewed not only in the context of the economy, demography, and history of the county but also in the context of the development of law, particularly as it has affected lower civil courts, in the United States and Florida. The most comprehensive volume on the history of American law was written by Lawrence Friedman and published in 1973. Unless otherwise noted the sketch of American law in the section that follows is based on Friedman's book.

American law was derived primarily from English law. English law is "common law" and is based on the decisions of common law judges. In contrast most European systems of law, such as those of Germany and France, are modernized forms of Roman law embedded in codes or statutes. By 1600 English lawyers were professionals who were trained not at universities but at "Inns of the Court," where their education was practical rather than theoretical. Common law at this time revolved around two basic themes: formal legal process and the law of the land. The clients of common law courts were members of the aristocracy and represented only a small percentage of the population. The majority of the population was subject to the law of the manor, which varied from locality to locality. Courts of equity, administered by literate clergymen, also existed in England. Members of these courts had the power to dispense with what they considered to be unfair rules. Under common law a person could only recover a payment of money, but under equity other remedies were available including compelling of a party to perform a

specific action. The jury system, popularly considered a hallmark of the American legal system, originated in the courts of equity.

At first the American colonies had simple, undifferentiated court structures in contrast to the complex multiplicity of courts in England. In early settlements, such as Virginia, laws were laid down much like military orders. Judicial business was not distinct from public business in general: the same individuals established laws, enforced them, decided cases, and ran the colony. Each colony had a charter, which was typically modeled after the trading company charter and as such resembled the charter of a business corporation. These charters established general courts composed of all free men. The courts were equivalent to meetings of corporate stockholders and functioned more as administrative bodies and legislatures than as courts in the popular sense of forums for hearing criminal and civil cases. Soon, however, county courts were established to hear civil and criminal cases as well as to fulfill administrative functions. In many colonies justice of the peace courts were founded in towns to hear cases involving small sums of money. These courts were presided over by nonattorneys and few records were kept. Development of special courts also became common. In 1639 Massachusetts established strangers' courts for speedy processing of cases involving strangers who could not stay long enough to attend the ordinary courts of justice. In Pennsylvania the Quakers, who disliked formal law and litigation, appointed three peacemakers to settle disputes, while the Southern colonies created special summary courts for slaves. All colonial courts were speedy and cheap compared with their English counterparts; in the colonies judgments were usually rendered on the day of the trial. Early county court records reveal that sanctions were most often brought against members of the lower social strata -- servants, the poor, and slaves.

After the American Revolution, there was general interest in reform of the legal system, which the country's new leaders criticized as remote from the needs of ordinary people, biased toward the rich, and irrelevant to the businessman. By the nineteenth century the legal system began to influence more and more people as the economy expanded and increasing numbers of people began to own land and to operate businesses. The nineteenth century also saw the widespread establishment of corporations as a form of business organization. Before this time most incorporated organizations were municipalities, charities, and churches. The colonial courts had been concerned with maintaining order and punishing sinners while the nineteenth century courts were dominated by property and contract cases. There was public sympathy for business, productivity and growth, and the law favored manufacturers and producers. Most court decisions in the nineteenth century agreed with the common law doctrine of "Caveat emptor" -- "let the buyer beware." According to this doctrine individuals are allowed to enter freely into bargains but once they do so are held in strict compliance. With the expansion of business came the widespread use of credit. Because so many businesses bought on credit, debt began to lose its stigma and imprisonment for debt was abolished. Many lawyers, however, spent a great deal of their time collecting on promissory notes, the primary form of credit.

In the last half of the nineteenth century, major social and economic changes occurred in the United States. The population increased and cities grew enormously, mainly as a result of immigration; the western frontier was settled; the country became a major industrial power; transportation and communication were vastly improved; and overseas expansion began. Before 1850, most factories, except for textile factories, were small enough so that

the proprietor was able to establish a personal relationship with each of his workers (Cochran 1972). After 1850 the rich became even richer and expanded their factories, mines and banks. A huge number of immigrants entered the United States during this period -- about one-half million in 1880 alone (Friedman 1973:484) -- and provided cheap labor for the factories, mines, and mills.

Toward the end of the nineteenth century the lower courts began to process a huge number of small cases, the most common of which were debt collections, divorces, and mortgage foreclosures. Major businesses had begun to avoid the courts, preferring to settle disputes among themselves and to use the courts only for routine matters such as debt collection. As a result of the industrial revolution more and more torts, especially personal-injury actions, were filed in the courts. Many of these cases were filed against railroad companies whose machines killed livestock and set fire to crops as well as injuring individuals. By 1910 there were 25,000 annual deaths and millions of injuries from industrial accidents in the United States (Cochran 1972). By the end of the century consumers began to oppose manufacturers in court. These persons were small merchants and farmers who were dissatisfied with supplies they received from manufacturers. Ordinary purchasers unhappy with products did not regularly file cases in court until the growth of the consumer movement of the 1960s.

In the twentieth century, trends begun in the nineteenth century continued: the population grew, cities expanded, businesses became larger, and fewer people lived on the land. Between 1890 and 1970 the percentage of family and tort cases filed in the courts increased dramatically while the proportion of property and contract cases fell (Friedman and Percival 1976).

During the Depression of the 1930s people began to make greater demands on the federal government for jobs, relief, and economic reform. Federal law, particularly in the areas of taxation, business regulation, and civil rights, grew enormously. With the civil rights movement of the 1950s and 1960s, the federal courts became a forum for protection of civil liberties. The twentieth century also witnessed the rise of administrative, land use, environmental protection, and consumer protection law.

Another twentieth century trend that has had an effect on court case-loads, particularly of lower civil courts, is the rise in the amount of consumer debt, especially since World War II. From 1967 to 1979 alone Americans' per capita debt -- mortgages, credit-card balances, automobile loans and other loans -- rose from \$2,028 to \$5,625 (U.S. News and World Report 1979:57). The average household debt equaled 83.3 percent of the household income after taxes in 1978, compared with 79.5 percent in 1977 and 36.9 percent in 1950. An increasing number of families are relying on the incomes of both husbands and wives to meet day-to-day living expenses including the repayment of mortgages and other debts. Problems repaying these loans arise if one worker loses his or her job. Credit is also easier to obtain than it was 10 or 20 years ago and people, particularly young adults 25-34 years old, are taking advantage of the situation to accumulate goods that took their parents years to acquire. In an interview with U.S. News and World Report, Robert E. Gibson, President of the National Foundation for Consumer Credit, revealed that many people are using credit not for convenience but to supplement family income and that a typical family seeking credit counseling owes from ten to fourteen creditors (1979:59). Many creditors who fail to receive payments from consumers file cases in lower civil courts in an effort to collect the debt.

From the few available studies, the courts in Florida appear to have undergone an evolution similar to that detailed by Friedman (1973) for American courts in general. When Florida became a United States territory in 1821 as a result of a treaty with Spain, it was very sparsely populated. Most of the Spanish had settled in St. Augustine and Pensacola and the aboriginal population, once found throughout Florida, had disappeared from disease and war a century before. The Seminole population of North Florida had already been pushed further south into the peninsula as a result of the First Seminole War. There were no competing systems of law in Florida in 1821 when Andrew Jackson imposed common-law procedure on the territory (Friedman 1973). Tallahassee, being halfway between St. Augustine and Pensacola, was selected as the capital of the territory in the fall of 1823. By the spring of 1824 the first settlers arrived and a log cabin was built for the legislative council. In 1825 attorneys met in Tallahassee to organize a court of appeals for the territory (McCord 1956).

The main litigation during territorial times concerned promissory notes, mortgage foreclosures, and property salvaged from wrecked vessels off Florida's coast (McCord 1956). In contrast to the twentieth century, there were no appeals in divorce or personal injury cases. McCord summarizes several typical cases brought before the court of appeals in the 1820s and 1830s. In Buckra Woman v. Philip R. Younge the Buckra woman attempted to recover money from P. R. Younge based on a promissory note, which stated: "Due to bearer, Payne's sister, for balance on John Forester's order for cattle received by him on our account in August 1804 is 6,800 Chalks, and now due to her 4,300 Chalks. St. Augustine, E. F. 22 April 1808. Ph. R. Younge." Because no evidence was presented in court that the note had been transferred from

Payne's sister to the Buckra woman or that the Buckra woman was Payne's sister, the Buckra woman lost the case. Another case, City of Tallahassee v. Robert Butler, entailed charges against Robert Butler, the surveyor of the territory, for using material claimed by the city. Both sides cited various territorial acts and the court held that Robert Butler had a legal right to remove the material. The other three examples given by McCord involve a specific type of property -- slaves. Thornton and Willis v. Romeo Lewis revolved around a labor contract for hire of Negroes to work on the capitol. Belinda and Charlotte v. Chaires and Berry entailed the question of who was to inherit two slaves, Belinda and Charlotte, after their original owner's death, and City of Tallahassee v. James Newby was another labor contract case.

Parker (1948) examined the functions of the Leon County Court between 1825 and 1833. Much of the county court's time was taken up by administrative tasks. The court was custodian of lands belonging to the county, in charge of road building, of establishing patrols when necessary to keep the peace, and of supporting the poor and infirm. After 1829 the court was also authorized to tax free persons of color in money or labor and to hold elections. For example in 1827 a tax of \$.50 was imposed on all white males between 21 and 45. A \$5 tax was imposed on free colored males and a \$3 tax on free colored females between 18 and 50. Parker does not describe any cases heard by the court during this period.

Justice of the peace courts were also established in Florida during the territorial period. The courts were to hear all causes "founded upon any kind of bill, note, or account when value was \$20 or less" (Farris 1941:359). The most common type of suit brought to justice of the peace courts was for collection of

debts (Farris 1941). Criminal cases were handled by circuit courts and superior courts. Circuit courts had exclusive jurisdiction over probate and estate cases.

During the territorial period and until the end of the Civil War slaves were disciplined by household tribunals held on the plantations (Richardson 1978). After the war a county criminal court was established to replace these tribunals. Negroes were allowed to testify only in cases involving other Negroes and even in these cases the jury was to be all white. The act creating county criminal courts stipulated that anyone who could not pay a fine would be sold to any person who paid the delinquent fine and court costs. Florida courts meted out especially harsh punishments for freemen; when the law called for fines and imprisonment, the court could substitute whipping or the pillory. Whipping served the function of public humiliation as well as insuring that the person would not be taken away from work on the plantation by imprisonment (Richardson 1978). In general after the war freemen were assessed large fines for petty offenses, while white violence against Negroes was ignored or lightly punished. When blacks attempted to file civil cases, the justices of the peace or the civil judges usually required costs to be paid in advance. Injustice in the Florida courts was so common that Negroes looked upon these institutions as instruments of racial oppression (Richardson 1978). The Reconstruction Acts of 1867 overturned the most discriminatory of the so-called Black Codes, but "Black men continued to receive unfair treatment in many white courts, their labor system did not change, and even though school revenue was fairly distributed under the Republicans schools remained segregated" (Richardson 1978:379).

This brief history of courts in Florida reveals parallels between the development of law in Florida and in the rest of the United States: for

example, the common use of courts in the early nineteenth century to recover money from promissory notes and the function of county courts for administrative as well as judicial tasks. The discussion also highlights features of the social structure of the South. In the South a particular class of people -- slaves -- were considered property by the law until after the Civil War. After the war, Black Codes attempted to replace slavery with a type of a caste system and to preserve as much of possible of the prewar way of life (Friedman 1973). In spite of overturning of the Black Codes by the Federal Reconstruction Acts of 1867 and the Florida Constitution of 1868, continued discrimination was sanctioned by the behavior of the courts (Richardson 1978).

Development of Small Claims Courts

Like the rest of the development of law and courts, the development of small claims court needs to be viewed in the context of the nation, the state, and the county.

United States

Small claims courts appeared relatively late in the development of the American court system. They were only one of a series of judicial reforms enacted in the early decades of the twentieth century. Industrialization, immigration, and urbanization had brought about massive changes in United States society. In 1850 most of the country's 25 million people were rural (Cochran 1972). By 1920 the population had grown to 105 million, including 30 million recent immigrants or first generation Americans (Austin 1923). Differences in wealth and education as well as language and custom generated controversies that a legal system developed for a homogeneous rural population could not handle; "what the past left to home and church we are compelled more and more to commit to the law and to the courts" (Pound 1913:321).

Reformers considered the legal system, because of delays, high costs and fees, to deny justice in two broad categories of cases: those entailing small amounts of money and those in which one of the parties was poor (Smith 1919). In these instances, people were forced either to forget their controversies or to take their cases to justice of the peace courts or to inferior courts. Neither of these choices was very satisfactory. The justice of the peace system was disorganized and unsystematic (Clayton 1939) and often presided over by laymen with little knowledge of the law (Anon. 1918), whereas inferior courts usually required as much formality in filing and procedure as they did in cases involving large sums of money (Clayton 1939).

Small claims courts were intended to increase access to courts by providing "for disposing quickly, inexpensively and justly of the litigation of the poor, for the collection of debts in a shifting population, and for the great volume of small controversies which a busy, crowded population, diversified in race and language necessarily engenders" (Pound 1913:315). By the "poor," early writers were not referring to indigents, but to the vast majority of the population (Yngvesson and Hennessey 1975), the millions of "humble and plain people" who could not afford the cost of litigation (Smith 1919).

Small claims courts were loosely modeled on Norwegian neighborhood courts of conciliation (Anon. 1918), established in 1797 to protect peasants from lawyers, who were believed to magnify wrongs and to increase hostility between parties. As a result, litigants left court "out of money and often enemies for life" (Grenstad 1918:9). Conciliation courts, established in every city, village and parish, consisted of two members selected from the best men in the community. All civil cases were required to go before the court of conciliation before they could be filed in civil court. The hearings were held in private,

lawyers were forbidden to appear, and members were sworn to secrecy. Defaults were curtailed by a very effective rule. If a party failed to appear before the court of conciliation, the other party could file a suit in regular court. The defaulting party was then required to pay court costs, regardless of the eventual outcome of the case. Grenstad (1918) reported that 90 percent of all cases brought to conciliation were settled.

The founders of small claims courts were also probably influenced by the concepts of scientific management, the prevailing business philosophy of the day. Its leading proponent, Frederic W. Taylor, studied the behavior of the individual as a single unit for analysis abstracted from his social relations both within and outside the workplace. He believed that all individuals could and should be taught the one, most efficient way of performing a particular task (Taylor 1911). The goal of scientific management was to increase an organization's productivity by restructuring work in a simplified, rational, and uniform way (Mouzelis 1967). Economic efficiency was viewed as the ultimate criterion of a successful work system (Sofer 1972). In a similar way, the founders of small claims court were primarily concerned with efficiency in terms of both time and money. In small claims court cases under a certain amount of money were to be processed quickly, inexpensively, and uniformly.

The first small claims court was established by the Municipal Court of Cleveland in 1913. Similar courts were established in Minneapolis and Chicago in 1917, in New York in 1918, in Massachusetts in 1920, and in California and South Dakota in 1921. Claim limits ranged from \$35 in Cleveland, Chicago, and Massachusetts to \$50 in Minneapolis and New York. Filing fees were low, varying from \$.25 to \$1.25, and hearings swift, between 5 and 25 days after filing. Service of summons was by mail, which was far cheaper than traditional

service by sheriff. Hearings occurred quickly. Chicago judges heard a contested case in an average time of 15 minutes (Anon. 1918), and Massachusetts judges heard as many as 100 cases per day (Anon. 1920). Chicago judges were able to process cases rapidly (about 1,000 per month) because many defendants failed to appear (Anon. 1918).

Corporations, associations, and assignees were not permitted to use New York's court. They were permitted in the other early small claims courts, but there is no evidence they dominated the dockets. In all small claims courts, procedure was simplified in order to decrease delays and to permit individuals to file a suit without counsel. In New York the rules of practice, procedure, pleading, and evidence were dispensed with and decisions were made solely on the basis of substantive law. In contrast to the Norwegian courts of conciliation, hearings were held in public and witnesses sworn (Alper 1934).

Small claims court forced the judge, accustomed to the adversary system, into a new role: "The judge cannot be a mere umpire. He must actively seek the truth and the law, largely if not wholly unaided. The judge represents both parties and the law" (Pound 1913: 319). In most courts, judges were instructed to make an earnest effort at conciliation before entering a judgment. For example, in Cleveland's court of conciliation, the judge was described as taking a very active role both in questioning the parties and in urging them to reach a settlement based on compromise. "The judge, by question and suggestion, seeks to elicit the point at issue. While no controversy is permitted to be drawn out at length, each party is allowed to state his case in his own way. When the essential facts are brought out, the judge seeks to effect an amicable adjustment of differences between parties" (Levine 1918: 13). Levine, a small claims court judge, felt it was important for both parties to leave satisfied. He

describes several cases in which the judge went beyond the information presented in the court in order to resolve a problem. In one case, a landlady was suing a man for the cost of a new mattress he had burned as a result of smoking in bed. The man did not deny that he was responsible for the fire, but he felt the amount of money the lady was requesting was too much. The judge telephoned a mattress dealer and got a price, substantially lower than that requested by the landlady, and the man gladly agreed to pay that amount (Levine 1918).

The clerks, as well as the judges, were said to take an active and important role in the early courts (Clayton 1939; Alper 1934; Harley 1919; Pound 1913). By showing parties how to present their cases and by eliminating unsubstantiated claims in some courts, the clerks saved valuable judicial time. In several courts, clerks gave direction and advice on points of law both before and after the trial (Columbia Law Review 1920). In New York courts clerks issued information to the defendants with the summons, advising them to bring documents, informing them that the clerk would subpoena witnesses without cost, and warning them that if they failed to appear, judgment would be rendered against them (Alper 1934). In Washington, D.C., clerks gave special assistance to individuals, but not to organizations such as partnerships and corporations (Clayton 1939).

Attorneys were discouraged in most early small claims courts, but in contrast to the Norwegian courts, they were prohibited only in California. Many of the early writers believed that because procedure had been simplified, lawyers would have nothing to do in small claims court (Committee on Small Claims and Conciliation Proceedings 1924); others felt that most lawyers would keep away on their own accord because of low fees (Anon. 1920). The

Committee on Small Claims and Conciliation Proceedings felt it would be a mistake to prohibit attorneys in small claims court because in "some cases where a party is ignorant, or frightened, or unfamiliar with our language an attorney might assist the court and facilitate the hearing" (America Bar Association Journal 1924: 830). The committee suggested legal aid attorneys be used for this purpose. Meanwhile, in New York the provision to permit counsel during conciliation was felt to limit the effectiveness of conciliation because of the fear that if conciliation failed, the attorney might later use information gained through the conciliation hearing against the other party (Anon. 1918).

Florida

The first small claims courts in Florida were established by legislative act in 1943, 30 years after the nation's first small claims court was founded in Cleveland. These local courts were presided over by justices of the peace and existed in Dade, Volusia, and Hillsborough counties. They were characterized by low filing fees, service of process by registered mail, and setting of a trial date not more than 15 days from the date of filing. In 1949 legislation was passed revising the court in Hillsborough County: the judge was required to be the senior circuit judge or his designee; the jurisdictional minimum was \$100 and the maximum \$500. The justice of the peace court had jurisdiction over cases less than \$100.

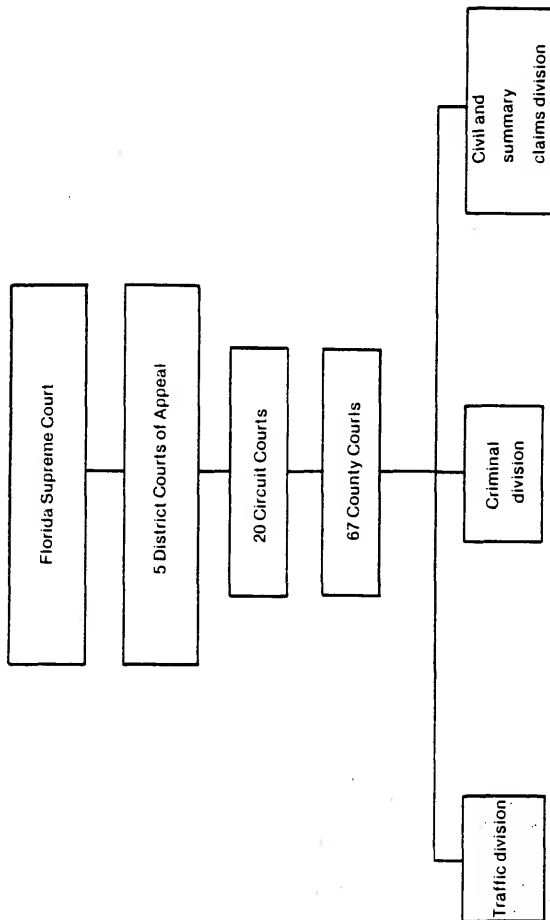
Chapter 26920 of the 1951 Laws of Florida provided guidelines for the establishment and operation of a small claims court in each county of the state. A small claims court was to be established only if a board of county commissioners determined that there was a local need for such a court. The claim limit was set at \$250 and the judge was appointed by the governor and required to be a member of the bar. The judge was paid by fees collected by

the court as long as the fees did not exceed \$7,500 annually. The judge was authorized to appoint a clerk and assistants who were also paid by fees. Hearings were to be held not less than five nor more than fifteen days from the date of service of process. The filing fee was \$3.50. The winning party could receive court costs from the losing party at the discretion of the judge.

Chapter 26920 instructed the small claims court judge to "make an earnest effort to settle the controversy by conciliation" (Section 12) immediately prior to the trial of any case. During the trial the judge was required to decide the case according to the rules of substantive law. If a judgment was entered against a party, the judge was to "inquire fully into the earnings and financial status of such party and shall have full discretionary power to stay an entry of judgment, and to stay execution . . . as shall seem just under the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied" (Section 14). In 1952 Leon County passed a law (Chapter 277224, Laws of Leon County) establishing a small claims court. The justification for this act was apparently Leon County's growing population, which by this time had reached 50,000. The court essentially followed the guidelines outlined in Chapter 26920, Laws of Florida except the claim limit was \$200 instead of \$250. By 1953, 552 cases were filed in Leon County small claims court. In contrast, in the same year, only 89 civil cases were filed in the county court, which also heard 2,411 criminal cases and 129 probate cases (Florida Judicial Council 1956). The relatively high number of cases filed in the Leon County Small Claims Court indicates that there was a need for such a court. The justice of the peace court continued to have concurrent jurisdiction over cases under \$100 until it was abolished in 1957.

In 1972 the Florida court system was reorganized as a result of revision of the Florida Constitution. Constitutional revision, effective on January 1, 1973, consolidated the fourteen different types of trial courts in Florida into a two-tier trial court structure composed of circuit and county courts, with small claims courts placed within county court under the name of summary claims (Figure 3.1). All judges' salaries were to be paid by the state instead of by court fees, and judges, except in counties with populations less than 40,000 were required to be members of the Florida Bar. The procedures to be used in all Florida small claims courts were outlined in the Rules of Summary Procedure. These rules were designed "to implement simple, speedy, and inexpensive trials of action at law in county courts" for civil claims not exceeding \$1,500 (Rule 7.010(a)). In many ways the intent and the requirements of the Rules of Summary Procedure are the same as the requirements of Chapter 26920 (1951). Once again, the judge was to "make an effort to assist the parties in settling the controversy by conciliation or compromise" (Rule 7.140(d)). Chapter 26920 specified that the judge could conciliate at any time before trial while the Rules of Summary Procedure expanded the judge's conciliation role to anytime before judgment. The Rules of Summary Procedure also requires the judge to "assist any party not represented by an attorney on: (1) procedure to be followed (2) presentation of material evidence (3) questions of law" (Rule 7.140(e)). Judges are not required as they were by Chapter 26920 to inquire into the earnings and financial status of the person against which the judgment is issued. The Rules of Summary Procedure extended the time between service and trial from 15 to 60 days.

FIGURE 3.1
FLORIDA COURT STRUCTURE



In 1979 several amendments were made to the Rules of Summary Procedure. Rights to discovery were modified to prevent a party from initiating discovery without leave of the court in cases in which the other party is unrepresented and has not initiated discovery (Rule 7.060); rights to venue were required to be printed in bold type on the summons (Rule 7.060); service of process was to be by registered instead of certified mail (Rule 7.070); and dismissal for failure to prosecute was to be reduced from one year to six months (Stauber 1980).

Leon County

All small claims courts in Florida are not structured in exactly the same way. In Leon County in 1981 there are three county judges who serve on small claims court. From January 1978 to January 1981 an average of 7,000 small claims have been filed annually in Leon County, compared with an overall average of 6,000 misdemeanors and 75,000 traffic cases. Each Monday in Leon County pretrial hearings are held for small claims cases. The three county judges preside over the pretrial hearings on a weekly rotating basis. During this time they continue to have other civil and criminal case duties. The judge hears small claims cases that remain unresolved at a later date. Thus the same judge follows the case from the pretrial through to the trial stage. In some counties pretrial hearings are not held; a case is brought before the the judge only once. Judges in some counties also serve exclusively on small claims court for a period of months before rotating to another division.

A case formally begins in the Leon County court when the plaintiff files a claim against the defendant by filling out a form in the deputy clerks' office. The case is given a docket number and a date is set for a pretrial hearing no more than 60 days from the date of filing. The defendant is then sent a copy of

the claim form by registered mail or by sheriff service. The claim form includes a notice to appear at the courthouse at a specific time and date for a pretrial hearing. The defendant is also notified that if he fails to appear a default judgment will be entered against him.

In regular civil proceedings pretrial hearings are frequently called between opposing attorneys and the judge. These hearings are used to narrow issues to be tried and to secure stipulations on matters and evidence to be heard (Black 1979:1069). Pretrial hearings in small claims court are not conducted in such a thorough or leisurely way. The role of the judge is also minimal. On each pretrial hearing day in Leon County plaintiffs, defendants, and lawyers all gather in a large courtroom on the second floor of the courthouse for either the morning (9:30) or afternoon (2:30) session. Some plaintiffs and defendants are accompanied by an assortment of friends or relatives. The judge, dressed in his robe and seated at the bench, calls the cases one at a time after making a few introductory remarks about the court and its procedures. Cases are processed very rapidly, as many as 50 to 60 per hour. Many defendants fail to appear when called, and the judge moves quickly to the next case. If both parties are present the judge will usually ask them to go into the hallway and try to reach a settlement. The judge does not take an active role in conciliation. If one of the parties begins to explain the details of the case, the judge will interrupt and suggest that the parties talk not to him, but to each other. Likewise, unless a question is asked, the judge does not give any information relevant to a specific case. Most small claims cases (approximately 75 percent) are disposed of during pretrial hearings. The judge instructs the clerk to set a trial date for the cases that remain unresolved.

Small claims trials are each scheduled separately in Leon County and may be held either in the judge's chambers or in the open courtroom at the discretion of the judge. Some judges prefer the informality of their offices, while others prefer the decorum of the courtroom and will schedule their small claims cases there whenever it is available. The judge is usually the same judge who presided at the pretrial hearing. Litigants are expected to bring witnesses and relevant papers to the trial. The degree of formality varies from case to case depending on whether the parties are represented by attorneys. When attorneys are not present, each litigant after being sworn in by the judge, presents his or her side of the case to the judge. After each party presents his or her case, the other party is allowed to ask questions. The judge may interrupt at anytime to ask questions and to clarify issues. When attorneys are present, the trials are generally more formal and the judge more passive. The judge may make a decision and briefly explain it at the end of the hearing, but more commonly he will notify the litigants by mail at a later date of his decision. In contrast to the pretrial hearings, the small claim trials are usually not rushed. Parties are usually given ample time to present their cases. The hearings may last from 15 minutes to several days, with the average case taking about an hour. The judge considers his job finished when he issues his decision. No effort is made by the court to help the plaintiff collect a judgment from the defendant although forms for execution and garnishment are available in the deputy clerk's office. Judges and clerks consider formal collection of a judgment complex and best left to attorneys. If a litigant is dissatisfied with the court's decision, he may appeal it from county court to circuit court although appeals are rare. Circuit court is not as informal as small claims

court; litigants are expected to follow the rules, which usually necessitate the expense of an attorney.

Summary and Conclusions

Settlers were first attracted to Leon County by reports of cheap land suitable for growing cotton. In the decades before the Civil War, a thriving plantation economy developed in the county. In 1860 Leon County produced thousands more bales of cotton than any other county in Florida. Over three-quarters of the county's population was Negro slaves. After the war, a tenant farming system replaced the earlier plantation economy. The Negro population remained high, and most of the county's Negroes became tenant farmers. Landowners trapped tenants into an everincreasing cycle of debt by selling them mules, tools, and food on credit. Cotton production gradually declined after the war, and many of the cotton plantations were converted to quail plantations by their new, wealthy northern owners. By 1890 large numbers of blacks began to leave the county for work on the railroads or in phosphate mines to the south or in search of work in northern cities. Economic growth resumed in Leon County in the early 1900s with the beginning of growth of state government and two state universities. However, this growth did not really gain momentum until after World War II. Both economic and population growth continued into the 1970s, with Leon County becoming one of the fastest growing counties in the nation. By 1978 the country's minority population had decreased to 20 percent. Meanwhile large numbers of young people had moved to the county, originally attracted by the two state universities. Leon County's per capita income is relatively high compared with those of neighboring counties, which remain dependent on agriculture, forestry, or fishing. What effects have these changes had on small claims court? The next chapter

describes the types of cases brought to the Leon County small claims court and the types of people who bring them. Do these people come from all segments of the county's population or do they disproportionately represent certain groups?

The Leon County court is not only part of the local community, but it is also part of the American legal tradition. Courts designed to hear cases for small amounts of money have a long history in America. Justice of the peace courts, for example, were some of the first courts established in the colonies. At the time of colonization, the English court system had become complex and cumbersome. Colonists, reacting to the English system, wanted their courts to be simple and undifferentiated. Speedy processing of cases was also considered desirable in certain instances. Massachusetts established special courts for the speedy processing of cases involving strangers, and southern colonies established summary courts for slaves. In the colonial courts, most sanctions were brought against servants, the poor, and slaves. By the nineteenth century the caseload of American courts had changed. Dockets were dominated by property and contract cases, and the law began to favor business, productivity, and growth.

By the end of the century major changes had occurred in American society: industrialization and immigration had swelled the size of American cities. The courts began to process more and more cases for small amounts of money. Meanwhile major businesses had started to avoid the courts, preferring to settle disputes among themselves. Businesses only used the courts for routine matters such as debt collection. It was within this setting that small claims courts developed. These courts, loosely modeled on Norwegian neighborhood courts of conciliation, were to dispose quickly, inexpensively, and justly of

cases entailing small amounts of money. The procedures used were to be simple, and lawyers were to be discouraged. The judges were to take an active role in assisting the parties. The following chapters describe how small claims court operates in one county today. Although the Leon County court has some unique features, it shares many characteristics with small claims courts throughout the nation. It also reflects some of the goals and some of the problems inherent in the court since its founding.

CHAPTER 4 LITIGANT CHARACTERISTICS

Access to justice for all citizens is a crucial requirement for a democratic society. As detailed in the previous chapter, the founding of small claims courts in the United States was originally intended to help meet this goal. The court was to be "a friendly forum where the citizen without means, or of limited means, could present his claim or defense with a minimum of confusion, delay and expense, and with or without the aid of a lawyer" (Clayton 1939: 205). Critics of small claims court have argued that the court is no longer a forum where the layman may receive justice quickly and inexpensively, but that the individual has been forgotten as the court has come to be dominated by corporations, government agencies, and attorneys (SCCSG 1972; Moulton 1969; Institute for Consumer Justice 1972; Pagter et al. 1964). According to these studies, individuals, when they do appear in small claims court, are most likely to be defendants and most likely are being sued by corporations and government agencies.

Nader and Todd (1978) offer a general theory of legal evolution that may help to explain the alleged shift in the function of small claims court from an institution easily accessible to the layman to one used primarily by businesses and attorneys. They suggest that access to formal dispute settlement forums decreases as societies become more complex. In legal institutions within complex societies there are many barriers to access for the average citizen including high costs, delays, distance, lack of information, and domination by professionals (Nader and Todd 1978).

The primary focus of this chapter is the amount of use of one particular dispute settlement forum by individual citizens and businesses. The characteristics of individuals and businesses who file claims in Leon County small claims court will be examined. Whether these individuals and businesses represent a broad range of types or whether they disproportionately represent particular segments of the community will be explored. Typical relationships between litigants will also be described in order to determine whether most cases filed are in fact complaints "between strangers of unequal power." These general concerns of access and power will be examined in reference to the following hypotheses:

1. Organizations (e.g., corporations, proprietorships, partnerships, government agencies) and service professionals (e.g., physicians, attorneys) will be more likely to bring cases to the court than private individuals (cf. Black 1976), whereas private individuals will be more likely to have cases filed against them than organizations.

2. Higher status organizations and persons will be more likely to have an attorney (cf. Black 1976).

3. Socioeconomic status (as defined by income, education, occupation, and residence), race, and sex will be related to the frequency with which people bring cases to Leon County small claims court with higher status persons bringing more cases than lower status persons (cf. Black 1976). On the other hand, lower status persons will be more likely than higher status persons to have cases filed against them.

4. Higher status persons will be less likely to default than lower status people (Moulton 1969).

5. Most of the cases in court will be between strangers (Nader and Todd 1978).

Types of Cases

In the small claims court literature cases are most commonly categorized according to type of litigant. Litigants either participate in the court as representatives of organizations (e.g., businesses, government agencies, service professionals) or as individuals. Throughout the United States, small claims courts have been found to have a high proportion of business plaintiffs and a high proportion of individual defendants (Pagter et al. 1964; Hollingsworth et al. 1973; Moulton 1969; SCCSG 1972; National Institute for Consumer Justice 1972; Ruhnka et al. 1978; Klein 1971). In order to determine whether a similar situation occurs in the Leon County court and to test the hypothesis that organizations and service professionals are more likely to bring cases to court than individuals a simple random sample ($N = 291$) of all cases filed in 1979 was taken.

In the majority (83.4 percent) of cases sampled plaintiffs were businesses, professionals, or landlords, whereas the majority of defendants (80.7 percent) were private individuals or tenants (Table 4.1). Businesses and professionals most commonly bring suit against individuals (Table 4.2). In contrast individuals were rarely found to sue businesses or professionals. Individuals, in fact, were more likely to sue other individuals than to sue businesses. Businesses occasionally filed suit against other businesses, but in interviews local businessmen revealed that they generally prefer to use other, nonjuridical methods to resolve disputes. Macaulay (1963) has described how businesses typically resolve disputes through negotiation without recourse to the courts:

TABLE 4.1
TYPES OF LITIGANTS
N 291

	Plaintiffs		Defendants	
	Number	Percentage	Number	Percentage
Business	211	72.5	52	17.9
Professionals*	21	7.2	0	0
Landlords	10	3.4	4	1.4
Tenants	4	1.4	10	3.4
Individuals	44	15.1	225	77.2
Government Agency	1	.3	0	0
Total	291	100**	291	100

*Includes medical doctors, veterinarians, and attorneys.

**Because of computer truncation, totals will not always equal exactly 100 percent.

TABLE 4.2
TYPES OF CASES BY LITIGANT

Type Plaintiff Defendant	Number	Percentage
Business v. individual	179	61.5
Individual v. business	20	6.9
Business v. business	32	11.0
Individual v. individual	24	8.2
Professional v. individual	21	7.2
Landlord v. tenant	10	3.4
Tenant v. landlord	4	1.4
Government Agency v. individual	1	.3
Total	291	100.0

TABLE 4.3
ITEM IN DISPUTE

Item	No. of Cases	Percent of Total Cases
Loan from institution	70	24.1
Services*	70	24.1
Goods	34	11.7
Visa and Mastercharge	26	9.0
Damage to Property	20	6.9
Labor/Materials	16	5.5
Overdraft	14	4.8
Rent	10	3.4
Security Deposit	4	1.4
Deficit after Repossession	4	1.4
Personal loan	3	1.1
Other	19	6.6
Missing (not in file)	1	--
Total	291	100.0

*Includes professional services as well as claims for car repair (5) and wages (3).

**Includes rental deposit, rental fees and disputes between roommates over a variety of items, such as phone and utility bills, and personal property.

lawyers if he wants to stay in business because one must behave decently . . you can settle any dispute if you keep the lawyers and accountants out of it. They just don't understand the give and take of business. (p. 85)

Several types of transactions between businesses and individuals appear most susceptible to litigation in small claims court. Loans from institutions and performed services accounted for nearly 50 percent of all claims filed (Table 4.3). Claims for nonpayment of goods and nonpayment of Visa and MasterCard accounts were also common.

The specific business types participating in small claims court are listed in Table 4.4, and businesses are categorized by scope in Table 4.5. The difference between types of business plaintiffs and types of business defendants is striking. Nearly 50 percent of all business plaintiffs were financial institutions (banks, collection agencies, credit unions, small loan companies, and credit corporations). No financial institution was a defendant in the random small claims court sample cases for 1979. The most common type of business defendant was in the service category (auto repair shops, hairdressers, physical therapists, psychologists, and medical doctors). Nearly all defendants were small, locally owned businesses. Although the percentage of plaintiffs that are local businesses is also relatively high (59.3 percent), many of these are banks and thus differ in important ways from other local businesses. Banks may be local in scope but they tend to be bureaucratic and impersonal, in contrast to the stereotype of local businesses as friendly and flexible (Caplovitz 1967).

Direct observation of court procedures over a period of a year and a half revealed that about ten particular businesses and physicians use the court repeatedly. Two of these businesses are small and locally owned. One is a plumbing company, the other a rental company. Two collection agencies also

TABLE 4.4
BUSINESS TYPE OF LITIGANTS

Type	Plaintiffs		Defendants	
	Number	Percentage	Number	Percentage
Bank	47	20.7		
Collection agency	22	9.7		
Credit union	18	7.9		
Small loan company	15	6.6		
Credit corporation	6	2.6		
Retail	23	10.1	8	16.0
Hospital	10	4.4	1	2.0
Service*	36	15.8	21	42.0
Plumbing	8	3.5		
Construction	5	2.2	7	14.0
Air condition repair	4	1.8	1	2.0
Wholesale	2	.9	3	6.0
Insurance company	8	3.5	4	8.0
Employment agency	3	1.3		
Accountants	3	1.3		
Engineers and architects	2	.9		
Rental company	9	4.0	1	2.0
Real estate company	6	2.6	4	8.0
Total	227	100.0	50	100.0

*Includes auto repair, attorneys, medical doctors, psychologists, physical therapists, and hairdressers.

TABLE 4.5
BUSINESS SCOPE OF LITIGANTS

	Plaintiffs		Defendants	
	Number	Percentage	Number	Percentage
Local	134	59.3	42	80.8
Regional	21	9.3	0	0
Statewide	31	13.7	2	3.8
National	40	17.7	8	15.4
Total	226	100.0	52	100.0

plumbing company, the other a rental company. Two collection agencies also regularly file cases in court. One represents a bank, the other represents universities trying to collect on student loans. Most of the cases filed by these businesses are for the collection of unpaid bills and are rarely contested. Each week these businesses and physicians usually bring from five to thirty cases to court, whereas most businesses only appear occasionally on the docket. The local businesses and physicians are not usually represented by attorneys unless the case is contested. The two collection agencies are always represented by attorneys. According to one of the deputy clerks, the local hospital filed large numbers of cases in small claims court (approximately 1,000 per year until 1979). Since that year, the hospital has used a collection agency instead of the court in its efforts to collect unpaid bills.

In all courts studied to date (Pagter et al. 1964; Hollingsworth et al. 1973; Moulton 1969; SCCSG 1972; National Institute for Consumer Justice 1972; Ruhnka et al. 1978, Klein 1971), a high proportion of plaintiffs were businesses and a high proportion of defendants were individuals. A similar situation was found in the Leon County court. This finding supports the general hypothesis that organizations and service professionals are more likely to bring cases to court than individuals.

Attorney Representation

Thirty-six percent of all plaintiffs in the case file sample were represented by attorneys. In contrast only 7.2 percent of all defendants were represented (Table 4.6). Analysis of the 549 cases observed during pretrial hearings shows an even greater discrepancy between plaintiff and defendant representation. In 47.7 percent of the cases plaintiffs were represented by attorneys, whereas only 3.1 percent of defendants were represented. The

TABLE 4.6
ATTORNEY REPRESENTATION

	Plaintiffs		Defendants	
	Number	Percentage	Number	Percentage
Yes	105	36.2	21	7.2
No	179	61.7	267	92.1
Yes, but only at collection	6	2.1	2	.7
Missing	1	-	1	-
Total	291	100.0	291	100.0

accurate than the figures from the pretrial observation sample. The case file sample is a simple random sample of all cases filed in 1979. Pretrials were selected for observation in an attempt to observe an equal number of hearings for each of the four judges who served on the court during this time. All judges set hearings for 9:30 AM. Three of the judges also hear cases in the afternoon if there are too many cases to schedule in the morning. The researcher probably inadvertently oversampled cases with attorneys by observing more cases in the morning than in the afternoon. It appears from a check of the pretrial dockets that cases with attorneys are more likely to be scheduled in the morning than in the afternoon.

Recent studies have associated attorney representation primarily with the theoretically most powerful opponent (i.e., businesses) (SCCSG 1973; Ruhnka et al. 1978). Several statistical tests were applied to the various samples of case files to determine whether there is a relationship between attorney representation and type of litigant in the Leon County small claims court.¹ In the case file sample from the Leon County court, a statistically significant relationship was not found between type of plaintiff and attorney representation (Table 4.7). Business plaintiffs were not found to be more likely to be represented than nonbusiness plaintiffs (i.e., individual). There does, however, appear to be a relationship between type of defendant and attorney representation (Table 4.7). A much higher percentage of business defendants than nonbusiness defendants (24.0 versus 3.8) were represented by attorneys. The relationship between attorney representation and type of litigant appears to be modified somewhat by the type of opponent. This modification appears much stronger for plaintiffs than for defendants as examination of tables 4.8 and 4.9 reveals. Table 4.8 depicts the relationship between type of plaintiff and

TABLE 4.7
RELATIONSHIP BETWEEN ATTORNEY
REPRESENTATION AND TYPE OF LITIGANT

Type of Plaintiff	Attorney		Type of Defendant	Attorney	
	Yes	No		Yes	No
Business	97	145	Business	14	42
Nonbusiness	<u>14</u>	<u>34</u>	Nonbusiness	<u>9</u>	<u>225</u>
Total	<u>111</u>	<u>179</u>		<u>23</u>	<u>267</u>

Chi square = 1.58462
Significance = .2081
Phi = .08346
Gamma = .23799

Chi square = 24.86996
Significance = .0001
Phi = .30901
Gamma = .78571

TABLE 4.8
RELATIONSHIP BETWEEN TYPE OF PLAINTIFF AND
ATTORNEY REPRESENTATION CONTROLLING FOR
TYPE OF DEFENDANT

<u>Defendant Business</u>			<u>Defendant Nonbusiness</u>		
Type of Plaintiff	Attorney		Type of Plaintiff	Attorney	
	Yes	No		Yes	No
Business	15	17	Business	82	128
Nonbusiness	10	14	Nonbusiness	4	20
Total	25	31		86	148

Chi square = .01355
Significance = .9073
Phi = .05185
Gamma = .10526

Chi square = 4.64134
Significance = .0535
Phi = .14084
Gamma = .52416

and 4.9 reveals. Table 4.8 depicts the relationship between type of plaintiff and attorney representation controlling for type of defendant. When the defendant was a business, business and nonbusiness plaintiffs were almost equally likely to be represented. In contrast, when the defendant was a nonbusiness, business plaintiffs were far more likely to be represented than nonbusiness plaintiffs. In sum, individuals bringing suits against each other appeared to be less likely to be represented than either businesses bringing suits against individuals or individuals bringing suits against businesses. A similar, although weaker, relationship was found for defendants (Table 4.9). Whether the defendant was represented also appeared to have an effect on attorney representation for the plaintiff (Table 4.10). Plaintiffs were represented in over half of the cases in which defendants were represented, but in only approximately one-third of the cases in which defendants were not represented. Plaintiff representation appeared to have a similar effect on defendant representation, with defendants more likely to be represented when plaintiffs were represented (Table 4.10).

The relationship of attorney representation with type and scope of business was also explored. Again, differences were found between plaintiffs and defendants. Attorney representation appeared to vary for plaintiffs both by scope and type of business (Tables 4.11 and 4.12). For defendants, business type and scope did not appear to have an effect on attorney representation (Tables 4.13 and 4.14). Statewide and national business plaintiffs were more likely to have attorneys than were local and regional businesses plaintiffs. Collection agencies, employment agencies, and wholesale companies were found to be specific types of business plaintiffs most likely to engage attorneys. Perhaps larger businesses are more likely to be represented than smaller businesses because they have more money to expend on attorneys.

TABLE 4.9
RELATIONSHIP BETWEEN TYPE OF DEFENDANT AND
ATTORNEY REPRESENTATION CONTROLLING FOR
TYPE OF PLAINTIFF

<u>Plaintiff Business</u>			<u>Plaintiff Nonbusiness</u>		
Type of Defendant	Attorney		Type of Defendant	Attorney	
	Yes	No		Yes	No
Business	4	28	Business	10	14
Nonbusiness	7	203	Nonbusiness	2	22
Total	11	231		12	36

Chi square = 3.47258
Significance = .0624
Phi = .14907
Gamma = .61111

Chi square = 5.4444
Significance = .0196
Phi = .38490
Gamma = .77419

TABLE 4.10
RELATIONSHIP BETWEEN ATTORNEY FOR PLAINTIFF
AND ATTORNEY FOR DEFENDANT

Attorney for Plaintiff	<u>Attorney for Defendant</u>	
	Yes	No
Yes	14	97
No	<u>9</u>	<u>170</u>
Total	21	267

Chi square = 4.40897

Significance = .0358

Phi = .13643

Gamma = .46326

TABLE 4.11
SCOPE OF BUSINESS PLAINTIFF BY ATTORNEY REPRESENTATION

Attorney	<u>Business Scope</u>			
	Local	Regional	Statewide	National
Yes	32 (23.9%)	3 (14.3%)	28 (90.3%)	19 (48.7%)
Yes, collection	6 (4.5)	0	0	0
No	96 (71.6)	18 (85.7)	3 (9.7)	20 (51.3)

Chi square = 57.62543

Significance = .0001

Cramer's V = .35785

Lambda (asymmetrical) = .28409 with attorney dependent

TABLE 4.12
TYPE OF BUSINESS PLAINTIFF BY ATTORNEY REPRESENTATION

Type	Attorney		
	Yes (%)	No (%)	Yes, Collection* (%)
Bank	7 (14.9)	38 (80.9)	2 (4.3)
Small loan company	1 (6.7)	14 (93.3)	0
Credit union	7 (38.9)	11 (61.1)	0
Collection agency	22 (100)	0	0
Auto repair	3 (50)	3 (50)	0
Plumbing	1 (12.5)	7 (87.5)	0
Construction	4 (80.0)	0	1 (20)
Air conditioning repair	2 (50)	0	2 (50)
Retail	7 (30.4)	15 (65.2)	1 (4.3)
Wholesale	2 (100)	0	0
Insurance	7 (87.5)	1 (12.5)	0
Employment	3 (100)	0	0
Accountants	1 (33.3)	2 (66.7)	0
Engineers/Architects	0	1 (50)	1 (50)
Hospitals	0	10 (100)	0
Service	9 (30)	20 (66.7)	1 (3.3)
Credit corporation	1 (20)	4 (80)	0
Real estate	0	6 (100)	0
Rental	4 (44.4)	0	5 (55.6)

Chi square = 118.41006

Significance = .0001

Cramer's V = .51183

Lambda with attorney dependent = .42529

*Attorneys were engaged at the collection stage; that is after a judgment has been issued by the court.

TABLE 4.13
SCOPE OF BUSINESS DEFENDANT BY ATTORNEY REPRESENTATION

Attorney	<u>Business Scope</u>		
	Local	Statewide	National
Yes	7 (16.7)	1 (50.0)	3 (37.5)
Yes, collection	1 (2.4)	0	0
No	34 (81.0)	1 (50.0)	5 (62.5)

Chi square = 2.92852

Significance = .5699

Cramer's V = .16781

Lambda = 0

TABLE 4.14
TYPE OF BUSINESS DEFENDANT BY ATTORNEY REPRESENTATION

Type	Yes	No	Yes, collection
Auto repair	1 (20.0)	4 (80.0)	0
Construction	0	7 (100.0)	0
Air conditioning repair	0	1 (100.0)	0
Retail	0	8 (100.0)	0
Wholesale	0	3 (100.0)	0
Insurance	1 (25.0)	3 (75.0)	0
Hospital	0	1 (100.0)	0
Service	5 (31.3)	1 (6.3)	10 (62.5)
Real estate	2 (50.0)	0	2 (50.0)
Rental	1 (100.0)	0	0

Chi square = 15.11058

Significance = .6544

Cramer's V = .38872

Lambda with attorney dependent = .09091

Owners and representatives of small, local businesses are also likely to have strong and long-term ties within the local business and legal community. The several local business owners who filed claims in small claims court were in fact well known to the judges and clerks. Interaction between these litigants and the judges was indistinguishable from that between the attorneys and the judges. Although many business owners and representatives are not attorneys, processing of small claims cases has become routine business for them and they have become as familiar with court procedures as many attorneys. Galanter (1974) has characterized such litigants as "repeat players." Repeat players engage in many similar cases over time and typically have advantages over the one time or occasional litigant even without employing an attorney. These advantages include use of records of transactions, access to specialists, and opportunities to establish informal relationships with court personnel. Being a repeat player also conveys a psychological advantage insofar as repeat players gain confidence in the assertion of their claim by understanding the procedures of the court and the behavior of court personnel.

Litigant responses to a questionnaire developed as part of the Florida Supreme Court's study of thirteen small claims courts throughout the state were analyzed to supplement the Leon County data on the relationship between type of litigant and attorney representation. This questionnaire provided information unavailable in the case files on the socioeconomic status of litigants. The relationship between attorney representation and socioeconomic status of the litigant, like the relationships between attorney representation and type of litigant (i.e., business, individual), is not as simple and straightforward as might be expected. In other words, the highest status litigants were not the most likely to be represented by attorneys in Florida's small claims

courts. Persons with higher incomes, however, were more likely to have talked with an attorney than were persons with lower incomes. For example, only 20 percent of those with annual family incomes between \$5000-9999 reported having spoken with an attorney about the case, whereas over 50 percent of those with annual family incomes over \$30,000 had contacted an attorney. Likewise individuals with more education were generally more likely to have talked to an attorney. Whites were also more likely to have consulted an attorney than blacks. Thirty-seven percent of responding whites reported having spoken to an attorney in contrast to 17.8 percent of responding blacks.

The relationship between actually being represented in court by an attorney and income, education, and race is somewhat different from the relationship between having consulted an attorney and income, education and race. People in the middle income brackets (\$15,000-19,999 and 20,000-29,999) were most likely to have been represented by an attorney in court, although people in the highest income bracket (\$30,000 and above) were most likely to have talked to an attorney. Perhaps this is because, as Mayhew and Reiss (1973) have pointed out, higher income persons have more contact with attorneys as a result of the greater frequency with which they buy and sell property. Several of the forty-two case studies support Mayhew and Reiss's contention. Several litigants spoke about their small claims cases to the same attorneys they had consulted over earlier property transactions. In addition to a higher probability of contacting an attorney over property exchanges, higher income individuals are more likely to have attorneys in their social and professional networks than are lower income individuals since attorneys enjoy relatively high economic and social status in the United States. For example, one of the plaintiffs in the case study sample is an accountant with several

clients who are attorneys. He talked with each one of them and sought their advice about his small claims case. Another litigant spoke to his brother's best friend's father who happens to be a prominent local attorney. Although higher income individuals have more opportunities to talk with an attorney, they may also have more confidence than lower income individuals in their ability to present their own case in court. As one local business owner with a graduate degree said after talking to the company's lawyer, "I figured I could handle the case myself."

In the Supreme Court questionnaire study the relationship between education and attorney representation was consistent with the finding on the relationship between income and attorney representation. Persons in the middle categories for education (9th to 11th grade; 12th grade) were more likely to have had an attorney than people with either the highest or lowest educational levels. The relationship between race and actual attorney representation also differs from the relationship between race and having merely talked to an attorney. Approximately 17 percent of blacks responding to these questions were represented, whereas approximately 13 percent of responding whites were represented. The figure for blacks may be distorted because so few (17) blacks responded to the relevant questions, whereas 109 whites responded.

Five hundred and forty nine cases observed during pretrial hearings were analyzed to gain further insight into the relationship between attorney representation and demographic characteristics of the litigants. Pretrial hearings are scheduled for all cases filed, although some cases (13 percent of all cases filed in 1979 case file sample) never reach the pretrial stage because of failure of service of process. Cases that are not resolved at the pretrial hearing are scheduled for trial.²

Analysis of the pretrial observation sample (N = 549) revealed some differences in attorney representation based on the sex and race of the litigants. A higher percentage of male plaintiffs than female plaintiffs (10 percent versus 5.4 percent) were represented. All of the represented plaintiffs (24) were white. However, a statistically significant relationship was not found between race and attorney representation for plaintiffs. Because there were so few black plaintiffs compared with white plaintiffs (15 versus 249) and because such a small percentage of all individual plaintiffs (11.1 percent) were represented, chance alone could account for the fact that none of the blacks were represented. These findings do suggest that males and whites are more likely to be represented in small claims courts than females and blacks. This is again consistent with Mayhew and Reiss's (1973) study in which they found black females with family incomes less than \$7000 to be the group least likely to have contact with an attorney. A similar relationship between sex and race and attorney representation was not found among defendants. Approximately equal percentages of males and females and blacks and whites were represented when defendants.

Data from the case file sample (N = 291) were used to further explore the relationship between demographic characteristics of litigants and attorney representation. Residence was selected as a general indicator of socioeconomic status of litigants. A relatively easy variable for the researcher to obtain, residence has long been considered one of the elements of socioeconomic status. Warner's Index of Status Characteristics, for example, was based on neighborhood as well as income, occupation, education, house type, and source of income (Warner, Meeker, and Eells 1949). In this study the addresses of litigants were matched to U.S. census tracts within the county to obtain a

general idea of the socioeconomic status of represented and unrepresented litigants. Census tracts were not appended to addresses of businesses, but only to addresses of litigants filing or being sued in court as individuals. Businesses were not included because other measures (i.e., business scope and type) were used to indicate their relative status. Litigants with addresses outside of Leon County were excluded from this sample as were those with post office box addresses. Census tracts were considered a valid indicator of socioeconomic status because they are based on neighborhoods and "are designed to be relatively homogeneous areas with respect to population characteristics, economic status, and living conditions" (Bureau of the Census 1979:26). The residential distribution of represented and unrepresented litigants by census tracts, however, failed to show a statistically significant relationship. Both represented and unrepresented plaintiffs and defendants appeared to be distributed essentially randomly throughout the county.

Demographic Characteristics

In order to determine whether litigants in small claims court are representative of all segments of society or whether they disproportionately come from certain classes, several variables were chosen as indicative of socioeconomic and demographic status. Information about sex, race, age, dress, and appearance of litigants was obtained from pretrial observations. Age was coded, as visually determined by the observer, within three categories: young (20 to 40 years old), middle aged (40 to 60 years old), and old (over 60 years old). Dress was coded as formal (suit or jacket and tie for men, dress or suit for women), casual-neat (pants and shirt for men, blouse and pants or skirt for women), casual-sloppy (wrinkled, ill-fitting, dirty, or torn clothing), or uniform. Personal appearance was coded into three broad categories: attractive,

neutral, and unattractive. The vast majority of persons were coded as neutral. Only those considered to be either extremely attractive or unattractive were coded as such.

The forty-two detailed case studies were also used to obtain additional data on litigants. Litigants in this sample were asked about their education and occupation. Their speech was also coded as standard or nonstandard. Language coded nonstandard was primarily Black English and was distinguished by the observer from standard English in several ways, including use of double negatives, nonstandard conjugation of the verb "to be," and unintelligibility. Nonnative speakers of English who spoke Standard American English with a foreign accent were considered to have standard speech.

In the pretrial observation sample slightly more plaintiffs were male than female (53.01 percent versus 45.9 percent). Researchers studying other courts found a disproportionate use of these institutions by men and women. In a study of an urban multiethnic housing project Merry (1979) found women (and elderly men) to be heavy users of the local criminal court. She theorizes that the "threat of court action increases power and bargaining position of people such as women and elderly men who can neither resort to violence nor mobilize others who can" (1979: 921). Likewise Nader and Collier (1978) report among the Maya and Zapotec that women are the most frequent complainants in court. According to Nader and Collier these women use courts to compensate for their lack of power in society and to penalize their husbands and other males. There was no evidence that large numbers of females were enlisting the aid of the court in their personal disputes with men, although two cases were observed of women suing ex-husbands for child support or other payments. It should be noted that most child support and alimony cases go before circuit court, which

has jurisdiction over divorces. Thus a study of circuit court might reveal a greater incidence of suits by women against men. A greater disparity was found between the proportion of men and women defendants than between the proportion of men and women plaintiffs. Nearly 50 percent (49.7) of the defendants were males, 35.1 percent were females, and 13.5 percent were married couples.

In the pretrial observation sample, whites were greatly overrepresented among plaintiffs in relation to their portion of the county's population (75 percent). Whites accounted for 94.0 percent of the plaintiffs, and blacks accounted for 5.7 percent. In contrast, whites were underrepresented and blacks overrepresented in the sample of defendants. Of the defendants 49.2 percent were white and 50.8 percent were black.

Nearly all plaintiffs (95.9 percent) were young (20-40) or middle aged (40-60). The age distribution of defendants was more even with 46.3 percent young, 33.3 percent middle aged, and 20.4 percent old. Plaintiffs were more likely to be formally dressed than were defendants. Almost half (47.0 percent) of the observed plaintiffs were formally dressed, whereas only 29.9 percent of the observed defendants were formally dressed. Likewise a higher percentage of plaintiffs than defendants (6.7 percent versus .4 percent) were judged by the observer to be attractive.

The variables observed during pretrial observation, with the exception of sex, point to the lower status of defendants vis-a-vis plaintiffs. A higher percentage of defendants than plaintiffs were black, old, poorly dressed, and unattractive. Some of the differences between plaintiffs and defendants may be explained by the fact that more plaintiffs than defendants are businessmen or professionals and are thus more likely to be prosperous, well-dressed, and

well-groomed. Businessmen are also more likely to view courts as a place of business and to dress accordingly.

Analysis of the census tracts of individual plaintiffs and defendants failed to support the distinctions between plaintiffs and defendants drawn from pretrial observations. No clear differences were found between plaintiffs and defendants in terms of residence. Table 4.15 lists the numbers and percentages of plaintiffs and defendants by census tracts. Because these numbers may simply reflect the populations of the tracts (with the highest population tracts having the highest numbers of litigants), the numbers of plaintiffs and defendants per 1,000 persons were calculated and are shown in the table. The 1980 Census was the source of tract population. Other researchers (Fine 1978, Moulton 1969, SCCSG 1972) have hypothesized, and the pretrial observations have suggested, that plaintiffs and defendants come from different strata of society. If this hypothesis is true, the census tracts from which they come should be different, with plaintiffs coming from middle and upper class neighborhoods and defendants coming from lower class neighborhoods. The census tracts were ranked according to number of plaintiffs and defendants per 1,000 persons (Figure 4.1). There is no clear geographic pattern for the distribution of either plaintiffs or defendants. Median per capita income and racial composition are given in Table 4.16 as an indicator of the relative social class composition of the tracts. As can be seen in the table, the highest and lowest ranked tracts for both plaintiffs and defendants show wide variation, both on income and racial composition.

To statistically test the relationship between plaintiffs and defendants and income and race, the Kendall Rank Correlation Coefficient τ (tau) was used. The census tracts have already been ranked according to their rates of

TABLE 4.15
LITIGANTS BY CENSUS TRACTS
(from case files)

Census Tract	Plaintiffs Number (%)	Plaintiffs per 1,000 persons	Defendants Number (%)	Defendants per 1,000 persons
1	0	0	6 (4.7)	11.7
2	0	0	5 (3.9)	1.2
3	0	0	8 (6.3)	1.5
4	0	0	1 (.8)	.4
5	0	0	0	0
6	2 (6.7)	.5	3 (2.4)	.8
7	1 (3.3)	.7	2 (1.6)	.9
8	2 (6.7)	.8	4 (3.1)	1.5
9	1 (3.3)	.1	3 (2.4)	.4
10	1 (3.3)	.2	6 (4.7)	1.2
11	0	0	9 (7.1)	1.7
12	1 (3.3)	.8	2 (1.6)	1.5
13	0	0	1 (.8)	.3
14	3 (10.0)	.7	8 (6.3)	1.3
15	0	0	1 (.8)	.3
16	1 (3.3)	.2	8 (6.3)	1.4
17	0	0	3 (2.4)	.5
18	1 (3.3)	.2	4 (3.1)	.7
19	1 (3.3)	.1	10 (7.9)	1.4
20	6 (20.0)	.6	13 (10.2)	1.3
21	5 (16.7)	.7	5 (3.9)	.7
22	0	0	9 (7.1)	.9
23	0	0	0	0
24	2 (6.7)	.15	9 (7.1)	.7
25	1 (3.3)	.09	3 (2.4)	.3
26	1 (3.3)	.3	3 (2.4)	.9
27	1 (3.3)	.2	1 (.3)	.2
Total	30 (100)		127 (100)	

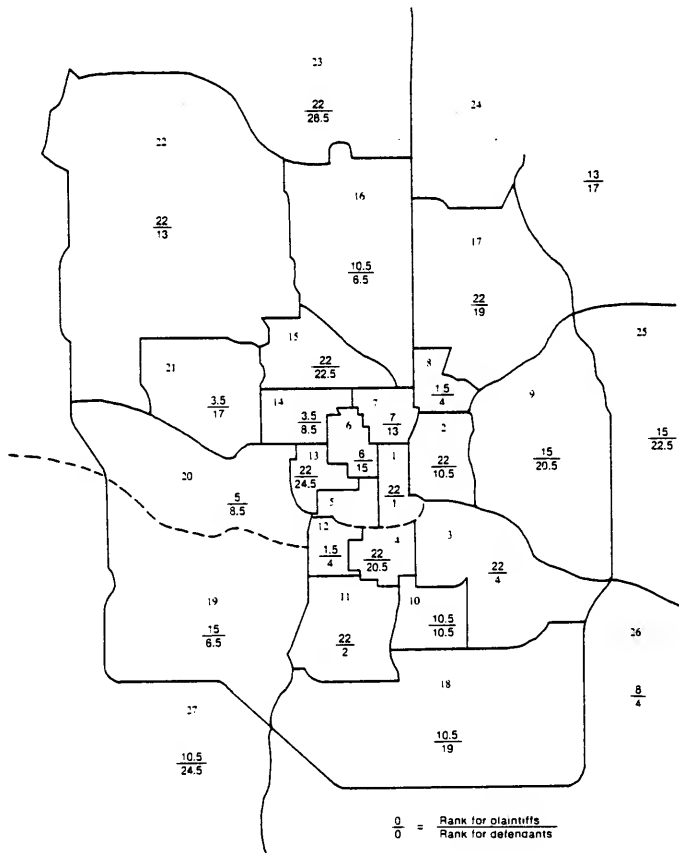


FIGURE 4.1
LITIGANTS IN CASE FILE SAMPLE BY CENSUS TRACT

TABLE 4.16
RANK BY INCOME AND RACIAL COMPOSITION

PLAINTIFFS				DEFENDANTS			
Tract	Rank	Per Capita Median Income 1970*	Racial Composition 1980 White Black	Tract	Rank	Per Capita Median Income 1970*	Racial Composition 1980 White Black
8	1.5	4,750	2,349	1	1	2,681	401
12	1.5	1,347	255	11	2	1,681	101
14	3.5	1,678	1,289	3	4	4,953	2,920
21	3.5	4,161	4,015	8	4	4,750	445
20	5	3,347	6,598	12	4	1,717	255
8	6	1,375	3,907	16	6.5	3,317	1,289
7	7	3,148	3,453	19	6.5	3,036	718
26	8	2,401	1,865	19	6.5	2,230	2,777
10	10.5	2,633	1,856	14	8.5	1,678	4,235
16	10.5	3,321	2,321	20	8.5	3,397	1,974
18	10.5	3,636	2,360	2	10.5	3,397	8,088
27	10.5	2,340	1,777	10	10.5	4,556	1,907
24	10.5	2,926	1,392	7	10.5	2,633	130
9	13	2,968	4,931	22	13	3,148	4,171
9	15	3,608	11,255	22	13	3,148	1,865
19	15	2,230	1,426	22	13	2,759	235
25	15	4,235	6,635	26	13	2,401	11,086
1	15	2,339	709	6	15	1,375	4,703
1	22	1,517	2,777	18	15	3,375	775
2	22	2,681	1,517	21	17	2,340	3,473
3	22	4,556	101	24	17	4,161	3,988
7	22	4,263	3,838	17	17	3,966	6,598
4	22	3,162	120	17	19	5,384	11,255
5	22	2,659	415	4	19	5,384	1,436
11	22	1,681	2,331	9	20.5	3,162	271
13	22	2,288	2,294	20.5	20.5	3,609	2,331
15	22	3,275	288	15	22.5	3,646	6,635
17	22	4,406	4,866	25	22.5	2,339	109
22	22	3,479	3,275	13	24.5	4,406	1,517
22	22	5,384	681	27	24.5	2,826	3,479
22	22	9,457	271	5	26.5	2,659	373
23	22	2,445	381	23	26.5	2,445	288
			1,226				1,256

*1980 data were not available from census.

production of plaintiffs and defendants (Figure 4.1 and Table 4.16). Next, they are ranked by per capita income and by percentage of blacks. Tau values were calculated to measure the degree of correspondence between the rankings of census tracts for plaintiffs and defendants and the rankings of tracts for income and racial composition. Thus, four different relationships were examined: (1) between production of plaintiffs and income (Table 4.17); (2) between production of plaintiffs and racial composition (Table 4.17); (3) between production of defendants and income (Table 4.18); and (4) between production of defendants and racial composition (Table 4.17). In order to determine their statistical significance, the four tau values were converted to Z scores and the significance of the Z scores determined by reference to a standard table (Siegel 1956). As can be seen from Tables 4.17 and 4.18, no relationships were found between either plaintiffs or defendants and income or racial composition based on census tracts. In this study, plaintiffs were not found to be more likely to reside in the highest income tracts nor were defendants found to be more likely to reside in the lowest income tracts. Likewise, racial composition of the tracts was not found to be linked to tract productivity of plaintiffs or defendants.

The question remains whether there is a difference between income of plaintiffs and defendants and race of plaintiffs and defendants. Although the statistics computed in Tables 4.17 and 4.18 suggest that there is not, a more direct comparison between income of plaintiffs and defendants and race of plaintiffs and defendants may be made. T-tests were used to make these comparisons. As shown in Table 4.19 and 4.20, no differences were found between income for plaintiffs and defendants or race for plaintiffs and defendants. These findings further support the view obtained from comparison

TABLE 4.17
RELATIONSHIP BETWEEN PLAINTIFF PRODUCTIVITY AND
INCOME AND RACIAL COMPOSITION

Census Tract	Rank Plaintiffs Per 1,000 Population (X)	Rank Per Capita Median Income (Y)	Rank Percentage of Blacks (Y)
8	1.5	2	14
12	1.5	27	1
14	3.5	26	5
21	3.5	6	26
20	5	11	17
6	6	25	3
7	7	13	19
26	8	20	10
10	10.5	18	13
16	10.5	9	12
18	10.5	21	21
27	10.5	14	18
24	13	7	6
9	15	10	16
19	15	23	15
25	15	22	7
1	22	16	9
2	22	3	27
3	22	5	20
4	22	12	2
5	22	17	11
11	22	24	4
13	22	4	23
15	22	8	25
17	22	1	22
22	22	15	24
23	22	19	8

To calculate tau, S is calculated by subtracting the number of ranks which are smaller from the number of ranks which are larger below each rank of variable X. The results of each calculation are then summed.

H_0 : No relationship between census tract's productivity of plaintiffs and median per capita income.

$S = -38$

$\tau = -.1198$ (corrected for ties)

$Z = -.8764$

Probability of Z less than or equal to $-.8764 = .1894$

Fail to reject H_0

H_0 : No relationship between census tract's productivity of defendants and percentage of blacks.

$S = 43$

$\tau = .1355$ (corrected for ties)

$Z = .99$

Probability of Z greater than or equal to $.99 = .1611$

Fail to reject H_0

TABLE 4.18
RELATIONSHIP BETWEEN DEFENDANT PRODUCTIVITY AND
INCOME AND RACIAL COMPOSITION

Census Tract	Rank Defendants Per 1,000 Population (X)	Rank Per Capita Median Income (Y)	Rank Percentage of Blacks (Y)
1	1	16	9
12	2	27	1
22	3	15	24
2	5	3	27
14	5	26	5
26	5	20	10
8	7.5	2	14
11	7.5	24	4
17	9	1	22
24	10	7	6
15	11.5	8	25
20	11.5	11	17
19	13.5	23	15
21	13.5	6	26
3	15	5	20
9	16	10	16
4	22	12	2
5	22	17	11
6	22	25	3
7	22	13	19
10	22	18	13
13	22	4	23
16	22	9	12
18	22	21	21
23	22	19	8
25	22	22	7
27	22	14	18

H_0 : No relationship between census tract's productivity of defendants and median per capita income.

$S = 14$

$\tau = .05$ (corrected for ties)

$Z = .34$

Probability of Z greater than or equal to .34 = .3669

Fail to reject H_0

H_0 : No relationship between census tract's productivity of defendants and percentage of blacks.

$S = 12$

$\tau = .04$ (corrected for ties)

$Z = .29$

Probability of Z greater than or equal to .29 = .3859

Fail to reject H_0

TABLE 4.19
COMPARISON OF PERCENTAGE OF BLACKS BY
CENSUS TRACTS FOR PLAINTIFFS AND DEFENDANTS

Census Tract	Proportion Black	Number Plaintiffs	Estimated # Black Plaintiffs	Number Defendants	Corrected* Estimated # Black Defendants
1	.29	0	0	6	.0411
2	.002	0	0	5	.002
3	.045	0	0	8	.085
4	.897	0	0	1	.212
5	.18	0	0	0	0
6	.896	2	1.792	3	.635
7	.005	1	.005	2	.002
8	.132	2	.264	4	.125
9	.094	1	.094	3	.067
10	.149	1	.149	6	.211
11	.881	0	0	9	1.87
12	.985	1	.985	2	.465
13	.026	0	0	1	.006
14	.655	3	1.97	8	1.24
15	.004	0	0	1	.001
16	.150	1	.150	8	.284
17	.030	0	0	3	.021
18	.035	1	.035	4	.033
19	.114	1	.114	10	.270
20	.078	6	.468	13	.240
21	.003	5	.015	5	.004
22	.024	0	0	9	.051
23	.360	0	0	0	0
24	.398	2	.796	9	.847
25	.384	1	.384	3	.272
26	.254	1	.254	3	.180
27	.059	1	.059	1	.014
			$\bar{x}_1 = .2791$	$\bar{x}_2 = .2796$	
			$S_1^2 = .2654$	$S_2^2 = .1803$	

$$H_0: M_1 = M_2$$

$$t = -.0038$$

To be significant at .05 level t must be -2.01 or less.

*Estimated number of black defendants was divided by 4.23 to correct for differences in sample size between plaintiffs and defendants.

TABLE 4.20
COMPARISON OF INCOME BY CENSUS TRACTS
FOR PLAINTIFFS AND DEFENDANTS

Census Tract	Median Per Capita Income	Number Plaintiffs	Number Defendants
1	2,681	0	6
2	4,556	0	5
3	4,263	0	8
4	3,162	0	1
5	2,659	0	0
6	1,375	2	3
7	3,148	1	2
8	4,750	2	4
9	3,609	1	3
10	2,633	1	6
11	1,681	0	9
12	1,347	1	2
13	4,406	0	1
14	1,678	3	8
15	3,646	0	1
16	3,636	1	8
17	5,384	0	3
18	2,340	1	4
19	2,230	1	10
20	3,347	6	13
21	4,161	5	5
22	2,759	0	9
23	2,445	0	0
24	3,966	2	9
25	2,339	1	3
26	2,401	1	3
27	2,826	1	1

$\bar{X}_1$ and $\bar{X}_2$ were calculated by assuming that each litigant's income is the median income of his or her tract.

$$\bar{X}_1 = 3807$$

$$\bar{X}_2 = 3072$$

$$S_1^2 = 1,042,304$$

$$S_2^2 = 1,039,874$$

$$H_0: \mu_1 = \mu_2$$

$$t = .0058$$

To be significant at the .05 level, t must be 1.960 or greater.

Fail to reject H_0

of the rankings of census tracts by plaintiffs and defendants with the rankings by income and racial composition that it may be incorrect to associate plaintiffs with middle and upper class members and defendants with lower class members.

The social status of defaultors in particular has been subject to speculation both in the literature and by Leon County court personnel who characterize defaultors negatively as "deadbeats," "not from good elements of society," or neutrally as simply not having the money to pay. Several researchers (Moulton 1969, SCCSG 1972, National Institute of Consumer Justice 1972) have suggested that many persons default not because they do not have the money to pay, but because they are dissatisfied in some way with the product or the transaction, but are too intimidated to assert their defenses in court. Rapson (1961) found that many of the defaultors simply did not have the money to pay their bills. Caplovitz (1974) interviewed defaultors from regular civil courts in several large cities. He found defaultors to be persons of either marginal or poverty level income, many of whom were blacks or Hispanics. Many defaultors in Caplovitz's study reported that they had failed to pay because of marital or other problems unrelated to the transaction brought to court.

Analysis of the census tracts of defaultors in Leon County by income and racial composition failed to show any statistically significant relationships (Table 4.21). However, three of the six census tracts with the highest ratings (tracts 1, 12, and 14) are located near universities and have a high student population. A more detailed study would be needed before a clear picture

TABLE 4.21
RELATIONSHIP BETWEEN DEFAULTOR PRODUCTIVITY AND
INCOME AND RACIAL COMPOSITION

Census Tract	Rank Defendants Per 1,000 Population (X)	Rank Per Capita Median Income (Y)	Rank Percentage of Blacks (Y)
1	1	16	9
12	2	27	1
22	3	15	24
2	5	3	27
14	5	26	5
26	5	20	10
8	7.5	2	14
11	7.5	24	4
17	9	1	22
24	10	7	6
15	11.5	8	25
20	11.5	11	17
19	13.5	23	15
21	13.5	6	26
3	15	5	20
9	16	10	16
4	22	12	2
5	22	17	11
6	22	25	3
7	22	13	19
10	22	18	13
13	22	4	23
16	22	9	12
18	22	21	21
23	22	19	8
25	22	22	7
27	22	14	18

H_0 : No relationship between census tract's productivity of defaultors and median per capita income.

$S = 24$

$\tau = .075$ (corrected for ties)

$Z = .5486$

Probability of Z greater than or equal to $.5486 = .2912$

Fail to reject H_0

H_0 : No relationship between tract's productivity of defendants and percentage of blacks.

$S = 7$

$\tau = .022$ (corrected for ties)

$Z = .1605$

Probability of Z greater than or equal to $.1605 = .4364$

Fail to reject H_0

would emerge, but the findings of this study suggest that it is incorrect to identify defaultors solely as marginal members of society: They, like plaintiffs and defendants in general, appear to come from all strata of society.

The demographic characteristics of plaintiffs and defendants in the forty-two contested case studies differ in several ways from characteristics of litigants in general. Contested cases are those in which the litigants fail to reach a resolution during pretrial. These litigants take a more active role than most litigants by requesting a formal trial. These cases also tend to be more complicated than the routine "business vs. individual" collection cases. The contested cases selected for study were compared with all contested cases in the random case file sample in order to check the representativeness of the cases selected for detailed study. On the variables sex of plaintiff and defendant and attorney representation of plaintiff and defendant, the two groups yielded nearly equal percentages. In the larger case file sample, 62.5 percent of the plaintiffs were male and 34.4 percent female, whereas in the case studies, 64.1 percent of the plaintiffs were male and 30.8 percent females. For defendants in the larger sample, 62.9 percent were male and 28.6 percent were female; in the smaller sample 65.9 percent were male and 29.3 percent were female. For attorney representation, the following percentages were found: for plaintiffs, 31.5 percent were represented in the large sample versus 37.2 percent in the small sample; for defendants, 26.3 percent in the large sample versus 27.9 percent in the small sample. These figures suggest that although the number of detailed case studies is small, they are reasonably representative of litigants in contested cases.

Nearly twice as many males than females were litigants in these cases. There was little difference between the percentages of males and females for

plaintiffs and defendants. The racial composition of Leon County (75 percent white, 25 percent black) was more accurately reflected in contested cases than in the pretrial observation sample in which plaintiffs were disproportionately white and defendants disproportionately black. In contested cases 76.3 percent of plaintiffs were white and 23.7 percent were black; 60.0 percent of defendants were white, 33.3 percent were black, and 6.7 percent were of other races. Nearly all plaintiffs and defendants were young or middle age. Likewise few differences were found between the dress of the plaintiffs and the dress of the defendants. Approximately 40 percent of those in both groups were dressed formally. Nor were differences found between the appearance of litigants in these two groups. A higher percentage of defendants, however, than plaintiffs (24.0 percent versus 10.8 percent) exhibited nonstandard speech. There were few differences between the education and occupation of plaintiffs and defendants in the case studies (Tables 4.22 and 4.23). Likewise plaintiffs and defendants were found in census tracts scattered throughout the county (Figure 4.2). In general, the case studies of contested cases revealed fewer differences between plaintiffs and defendants than pretrial observations. In general these groups, as evidenced by occupation, education, and residence, came from all strata of society.

Relationships Between Litigants

The preceding section has detailed the types of litigants in small claims court concluding, in general, that plaintiffs are more likely to be organizations and high status individuals and organizations than are defendants. Plaintiffs are also much more likely to be represented by attorneys. The next question to be addressed is the nature of the relationship between litigants.

TABLE 4.22
EDUCATION OF DISPUTANTS IN CASE STUDIES

	Plaintiffs # (%)	Defendants # (%)
Elementary	1 (7.1)	
High School	1 (7.1)	
Trade School	3 (21.4)	1 (11.1)
Some College	6 (42.9)	4 (44.4)
College	7 (14.3)	<u>4 (44.4)</u>
Graduate School	1 (7.1)	
Total	<u>19 (100)</u>	9 (100)

TABLE 4.23
OCCUPATION OF DISPUTANTS IN CASE STUDIES

	Plaintiffs Number Percent	Defendants Number Percent
Blue Collar	5 (15.6)	4 (17.3)
Secretary	1 (3.1)	2 (8.7)
Teacher		1 (4.3)
Sales/Manager	6 (18.8)	3 (13.0)
Business Owner	8 (25.0)	4 (17.4)
Professional	4 (12.5)	2 (8.7)
Housewife	2 (6.3)	3 (13.0)
Student	6 (18.8)	4 (17.4)
Total	32 (100)	23 (100)

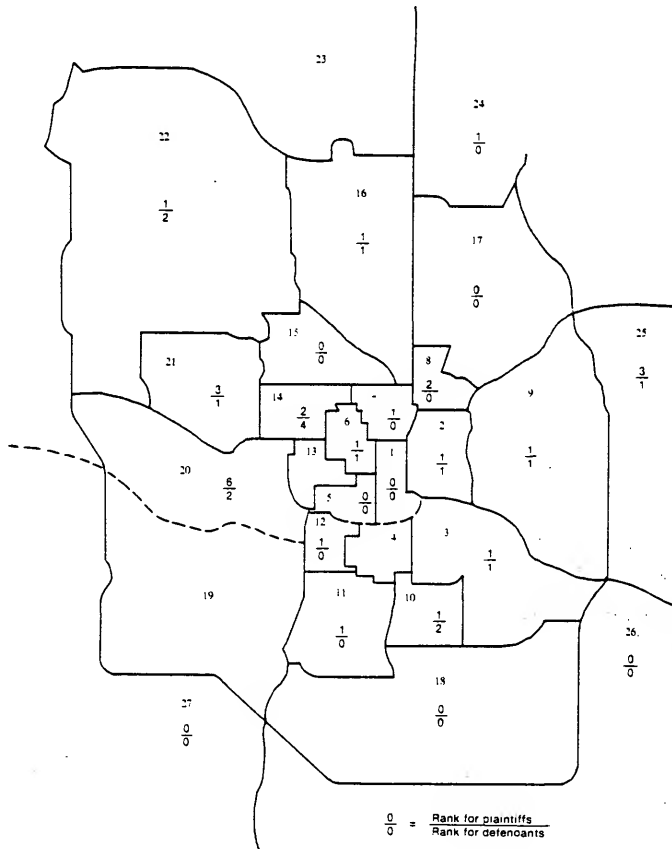


FIGURE 4.2
LITIGANTS IN CASE FILE SAMPLE BY
CENSUS TRACT

Anthropologists have suggested that there is a contrast between the relationships of disputants in small-scale traditional societies and the relationships between disputants in post-industrial societies such as the United States (Nader and Todd 1978, Nader 1977, Moore 1978). Nader (1977) uses the Zapotec of Mexico as an example of a small-scale traditional society in which relationships between people are face-to-face. The Zapotec are intertwined with each other both economically and socially. As a result there are many opportunities for interpersonal quarrels, and most grievances brought to the court do in fact concern interpersonal relations. Nader (1977) argues that in societies in which individuals have more economic and social independence and no longer depend on the same, limited set of persons for satisfaction of needs the legal system undergoes fundamental changes. According to Nader, the most powerful members of society begin to manipulate the legal system for their advantage, resulting in a shift in the function of the courts from dispute settlement to administration.

Interpersonal disputes are, of course, not absent in modern societies. What happens to them if they are not being handled by the formal dispute settlement forums? Felstiner (1974) believes that most persons in the United States do not use the courts to settle interpersonal disputes, particularly when the economic stakes are low; instead they merely avoid the other party in the conflict. Breaking off ongoing relationships is possible in the United States where persons frequently change jobs and residences, whereas avoidance is not as easy in traditional societies where there is little mobility. In a study of disputes in an urban multiethnic housing project in the United States, Merry (1979) found, however, that individuals do use criminal courts in an effort to deal with interpersonal disputes. The most common type of relationship

between disputants was not friends but acquaintances. Merry found court use to be disproportionately high among whites and disproportionately low among Chinese. The courts, however, were not very successful in resolving these conflicts. They were merely one step in an ongoing process. These disputes were ultimately resolved only when the parties decided to completely sever their relationship.

The statistics gathered during this study on type of litigant show that the vast majority of cases in Leon County small claims court are between strangers. The typical case entails an organization suing an individual. In 92.5 percent (508 cases) of the pretrial observation sample the relationship between the litigants appeared to be limited to a single business transaction. In many of these cases, the person representing the business plaintiff had never even met the defendant. Only 7.5 percent (41 cases) entailed more complicated types of relationships. A wider range of relationships between litigants was found in contested cases (defined as those that go to trial, representing 13 percent of the cases filed) (Table 4.24). Businesses suing individuals (whom they may not have ever met) were not found to be the most common type of case. Cases in which individuals were suing either other individuals or businesses were much more likely to result in a trial than cases in which businesses or professionals were suing individuals (Table 4.25).

Forty-two disputed cases were selected for detailed study. Both pretrial hearings and trials were observed for these cases. Because small claims cases are not recorded, detailed notes were taken during the pretrials and trials. All dialogues from these hearings are excerpts from the observer's notes and not from official court transcripts. Information was also gathered directly from litigants who were interviewed, usually in their homes or offices, sometimes in

TABLE 4.24
TYPES OF CASES FROM CASE STUDIES

Type	Number (percent)	
Business v. Business	4	(9.3)
Individual v. Individual	14	(32.6)
Business v. Individual	12	(27.9)
Individual v. Business	7	(16.3)
Landlord v. Tenant	3	(7.0)
Tenant v. Landlord	2	(4.7)
Attorney v. Individual	1	(1.3)
Total	<u>43</u>	

TABLE 4.25
RELATIONSHIP BETWEEN TRIAL AND TYPE OF CASE

Type of Case	No.	<u>Yes</u> %	No.	<u>No</u> %	Total
Business v. Business	5	15.6	27	84.4	32
Individual v. Individual	9	37.5	15	62.5	24
Business v. Individual	11	6.1	168	93.9	179
Individual v. Business	9	47.4	10	52.6	19
Government Agency v. Individual	0	0	1	100.0	1
Landlord v. Tenant	3	30.0	7	70.0	10
Tenant v. Landlord	1	25.0	3	75.0	4
Professional v. Ind.	0	0	21	100.0	21
Total	38		252		290

Chi square = 46.2486

Significance = .0001

Cramer's V = .39935

the courthouse immediately after the trial. These interviews were designed primarily to elicit litigants' perceptions of the dispute and the court. Pseudonyms are given to all participants to protect their rights to privacy. Although court records are public, the researcher believed that individuals would discuss their cases more openly if anonymity was assured.

Like the larger sample, most of the contested cases entailed business relationships (Table 4.26), but in contrast to the universe of all claims filed, in contested cases businesses were as likely to be defendants as to be plaintiffs (see Table 4.26). Many of these cases proved to be extremely complex although on the surface the issue in conflict appeared to be a simple business transaction. The transaction itself was frequently only the formal expression of a considerably deeper and more complicated conflict. Complexity in small claims court was frequently found to result from the intricacies of interpersonal relations and not from complicated legal issues. Several cases will be described in detail to illustrate the range in complexity found in the relationships between litigants in the court.

The first case, and the one in which the litigants have the most simple relationship, is between an attorney for a large collection agency and an individual who has failed to begin payments on a school loan. The attorney, a white male in his late 30s or early 40s dressed in a suit, had never met or even spoken with the defendant and in fact knew nothing about the case. He had brought the wrong folder to court and stood confused in front of the judge until his secretary (young white female) rushed in with the correct folder. In the folder was a letter from the defendant, who lived in Ocala 170 miles away, agreeing to pay \$20 a month. A conditional judgment was issued by the court and the case was over. The attorney explained later during an informal

TABLE 4.26
 TYPES OF RELATIONSHIPS
 BETWEEN LITIGANTS IN CASE STUDIES

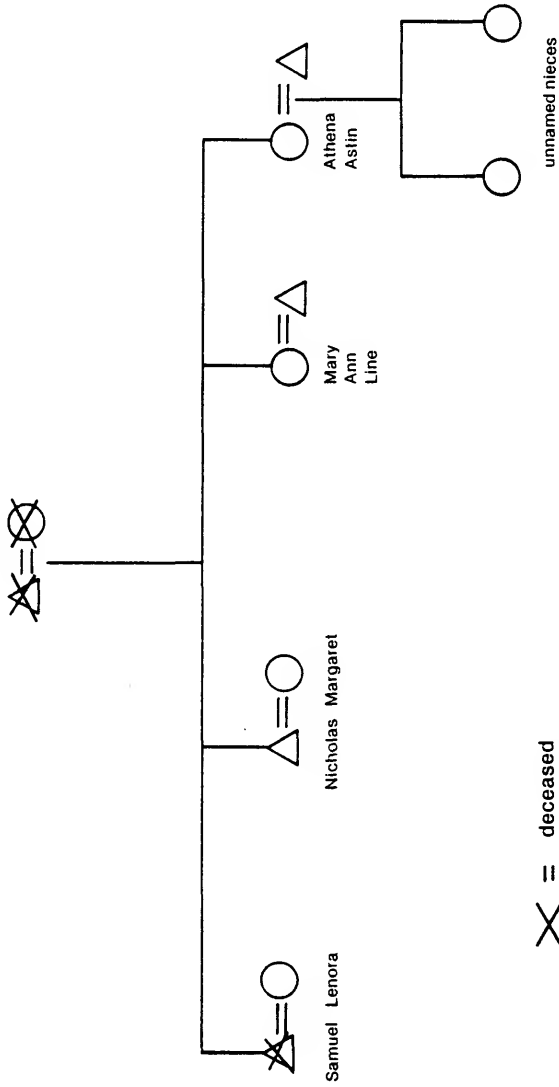
Type	Number	(percent)
Business	32	(74.4)
Friends (ex)	2	(4.7)
Roommates (ex)	2	(4.7)
Husband/wife (ex)	1	(2.3)
Kin	1	(2.3)
Neighbors	1	(2.3)
Parties in car accidents	<u>4</u>	(9.3)
Total	43	

conversation that his secretary does all the work; he simply appears in court and collects fees from his client on a case-by-case basis. "It's not worth my time. She calls the people, and she works things out with the people at Southern Collection [his client]." Few of his cases are scheduled for final hearings; most result in defaults, during pretrial hearings.

The second case entails extremely complex relations among members of a family, many of whom do not even appear in court. The litigants are two women who married brothers (Figure 4.3). One is claiming \$500 for nursing care she provided for the other's husband. As will be shown, the nursing fee claimed in this case is only an excuse for expression of deeper grievances among extended family members.

On February 4, 1980, two sisters-in-law appeared before the judge at pretrial hearing. Both were black, one (the plaintiff) was slightly overweight, neatly dressed in a blue pants suit; the other (the defendant) appeared to be much older and was seated in a wheel chair. She was accompanied by a white male attorney dressed in a blue suit. The judge looks over the claim form and says "Margaret Lewis claims \$500 for nursing care for Lenora Lewis's husband." The attorney responds, "she doesn't owe, she didn't hire her. This is kind of a family squabble. They married brothers." The judge asks, "is her husband deceased?" and the lawyer who obviously only became recently involved with the case, answers "no." At which point, Margaret, who had been squirming around, interrupts with "yes he is." The judge then asks her "why are you suing her and not his estate?" "She requested me to care for her husband. She had her sister-in-law ask for her." The judge interrupts with "I'm going to set for trial," but Margaret continues "I kept her [Lenora] also." To which the judge says "but you are only suing for taking care of the husband. You will have to

FIGURE 4.3
PRINCIPALS IN LEWIS FAMILY DISPUTE



swear that she hired you or authorized someone to hire you." Margaret interrupted with, "May I ask a question. . . . She couldn't care for herself." The judge responds, "that may or may not be a sufficient claim." A trial date is set and each side returns to seats in back of the courtroom and leaves with four to six assorted relatives (small children, middle aged men, younger women).

The trial was held several months later in the jury room since there were too many participants to fit comfortably in the judge's office. Margaret was accompanied by her husband, Lenora by her lawyer. Margaret was again neatly dressed and her straightened hair carefully groomed. Lenora looked considerably less prosperous in her cotton housedress and with her gray hair in two high childish looking braids. Margaret was noticeably angry and agitated and kept interrupting the judge and the other participants. Lenora, whose speech was impaired by a stroke, sat quietly and did not say anything until she was asked a couple of questions by her attorney. The only witness was Margaret's husband, a former minister. He was dressed in a coat and tie, and in contrast to his wife sat calmly and spoke only when the judge asked him a question

The following dialogue from the trial hints at some of the hostility within the Lewis family. Margaret Lewis is attempting to explain to the judge why she took care of Lenora's husband, Samuel. Samuel was very ill and wanted to leave the VA Hospital in a town several hours away, but the hospital would not release him unless he had someone to care for him. Samuel's sister Athena had apparently called Margaret and asked her to take care of Samuel. In this excerpt from the trial Margaret explains why she has sued Lenora and Lenora explains why she has not paid Margaret.

Judge: Were you his only nurse?

Margaret Lewis: Also his sister. They wouldn't give him from Gainesville unless someone cared for him.

Judge: How long did you care for him?

Margaret Lewis: Eight hours a day.

Judge: Did they ever say they didn't want you there?

Margaret Lewis: No.

Judge: Did they ever say they did? Why are you suing this lady? Why didn't you sue his estate?

Margaret Lewis: His estate is messed up. . . a lien or something.

Judge: Why are you suing her? Because she's his wife?

Margaret Lewis: That's the law.

Lenora Lewis' Attorney: I want to make sure we have all the names and relatives straight. Samuel is the man who died. Athena is his sister, and Nicholas is his brother. Nicholas is Margaret's husband. Your sister-in-law Athena called you and asked you to take care of Samuel. Did Lenora ask you?

Margaret Lewis: No, I'm not going to lie. Athena called me.

Lenora Lewis' Attorney: Did your husband ask you?

Margaret Lewis: No.

Lenora Lewis' Attorney (to Lenora): Did you ever contact your sister-in-law about taking care of Mr. Lewis?

Lenora Lewis: No. I'm a diabetic. I had a stroke in 1977.

Lenora Lewis' Attorney: Do you have any money?

Lenora Lewis: No, I get \$208 a month from social security.

Lenora Lewis' Attorney: Do you get help from your family?

Lenora Lewis: No.

Lenora Lewis' Attorney: No further questions.

Margaret Lewis: May I ask a question. He had three incomes... from VA, retirement from [his former employer], social security.

Judge: Is that a question? Who is it directed to? To Lenora? Then ask her.

Margaret Lewis: She saved money by having me. Everybody got paid except for me. . . even her grand nephew.

Judge: Why don't you ask her that?

Margaret Lewis: Why did everyone get paid except for me?

Lenora Lewis: Because I didn't have the money.

Interviews with the plaintiff and her husband revealed aspects of the case not mentioned during the trial. The defendant died before she could be interviewed. As it turned out, the plaintiff and her husband were actually angrier with other members of the family than with Lenora, who was named as defendant.

Interviewer: Is there anything you didn't say during the trial that you think is important for understanding the case?

Margaret Lewis: I should of subpoenaed Athena Astin, but I took her for her word. Also Mary Ann Line.

Interviewer: Who are they?

Margaret Lewis: My sisters-in-law.

Interviewer: Why didn't they come?

Margaret Lewis: Athena said she was afraid of the court. She sat right there and said she was afraid to come because of her heart, and Mary Ann Line was also afraid because she hadn't been to court before. . . . Between sisters it was understood what was going to be paid. . . . Lawyer Rendoe said he had a car and the land and I should get money from his estate, but the land was already messed up. . . . The family had signed it over to a niece. . . . He said to go to small claims court, to sue Lenora.

Interviewer: Did you talk to Lenora?

Margaret Lewis: I tried to talk to Lenora but she wouldn't talk to me. So I talked to the sisters.

Interviewer: Why did you sue Lenora?

Margaret Lewis: What is your husband's is yours.

Margaret Lewis had known Lenora Lewis for twenty-three years, but for most of that time they had lived in different cities. She lived in Washington, D.C., for twenty years, and Lenora lived in New Jersey. In 1976 the plaintiff and her family moved back to Tallahassee, where her husband was born and raised. She had worked for Lenora in 1977 after Lenora had been hospitalized with a stroke. She said they had always gotten along well. Margaret Lewis shifted the subject away from Lenora and told me at length about her nursing experience. She had worked in a nursing home for twenty years and had also been employed on many private duty cases. In Washington she nursed Cornelia Grant, President Grant's granddaughter, who had nurses round the clock, and she reported with some agitation "I always got paid. This is the worst case I ever got involved in. . . . Problem is working for colored people." During the course of this discussion, her motivation for suing Lenora Lewis became clearer. Margaret Lewis went to a lawyer about getting her money from the

nursing services she provided to Samuel Lewis before he died. She knew this lawyer through her husband who had contacted him concerning sale of some of the family's land. The lawyer told her to sue Samuel Lewis's estate to get her money. She reported that he had told her "all the sisters and the others got land. They're playing you for a fool." She found out that Samuel Lewis's land had been sold to a niece and her husband. At this point she decided to sue Lenora. Meanwhile, Lenora went to Legal Services and got a lawyer who represented her during the hearings. Margaret was not only angry about the money, but she felt Lenora should have called her in the beginning instead of having her sister-in-law call: "She should of done it herself. She can pick up the phone and talk. If I go to work, I can't send anyone in to punch the time clock for me."

Reverend Lewis, Margaret's husband, came in and explained that the case had a lot to do with land in the Lewis family. The land had been transferred again from one niece to another. He explained that originally the land was sold to one of Samuel's nieces so that Samuel would be able to qualify for some sort of welfare aid. The land was to be transferred back to Lenora after Samuel died. If this had happened, Reverend Lewis believed that Lenora would have had money and would have been able to pay Margaret. His sister Athena Astin had also told him if Lenora got the land back, Margaret would get her money. He said he's on Lenora's side about the land and against his niece. "What she did to Lenora was not right." His niece lives down the road and he still visits and "laughs with them, but they know how I feel about the land." He got Lenora a lawyer to help her get the land back. Margaret was not as kindly disposed

toward Lenora as her husband was: "I'll say good morning to her and good night you know what I mean. My Mother taught me that everyone deserves hospitality and that's it, but I'm not going to forgive or forget."

In reality the court's decision had no effect on the dispute within the Lewis family. Although the judge ruled that Margaret Lewis was not legally entitled to recover her money from the widow of the man for whom she had provided services, she, her husband, and her husband's sister believed that she was. Nor did the court even open the lines of communication between the plaintiff and defendant. Even though they were part of the same family they had not spoken to each other since the trial.

In contrast to the Lewis v. Lewis case, in Top Rate Ice v. Don Hsu's, Panhandle Builders, and John Benson the plaintiff remained on good terms with one of the defendants, Don Hsu's. The dispute was not actually between the plaintiff and the defendants, but the plaintiff was a victim of a conflict between Don Hsu's, Pandhandle Builders, and John Benson. Top Rate Ice filed the original claim against the three defendants for \$413.25 "for services rendered by plaintiff at Don Hsu's authorized by John Benson and Chester Wong." The attorney for Panhandle Builders and John Benson responded to the claim filed by Top Rate Ice by filing cross claims. Cross claims are claims against coparties in a lawsuit. The attorney for Panhandle Builders filed a cross claim against Don Hsu's and John Benson stating that "Panhandle Builders denies that it did business with plaintiff or received consideration. Panhandle Builders was brought into the suit at the suggestion of the codefendants Don Hsu's and John Benson. There is no justiciable issue of law or fact concerning Panhandle Builders." The claim requests the court to grant attorneys fees to Panhandle Builders from Don Hsu and John Benson. Meanwhile, John Benson's

attorney filed a cross claim against Panhandle Builders denying that John Benson had a contractual relationship with the plaintiff, Top Rate Ice: John Benson "received no consideration. . . . Any liability Benson may have resulted from action or lack thereof by defendant Panhandle; therefore any liability defendant Benson may have to plaintiff, defendant Panhandle is liable to defendant Benson in the same amount."

On the day of the trial no one appeared from Top Rate Ice. As a result the case was dismissed but not before some of the hostility between the parties was expressed. Chester Wong, a large Oriental man, was there for Don Hsu's. John Benson was also present and sat quietly throughout the short proceedings while his attorney directed much of the conversation. The owner of Panhandle Builders, Bill Jones, was also represented by an attorney. The first part of the hearing concerned a default entered during the pretrial. There was some question as to why the default was entered and against whom it was entered.

Judge: Default was entered back in September. Is anyone aware of that?

Jones' Attorney: No sir, against whom?

Judge: Panhandle Builders.

Jones: I don't know anything about it.

Benson's Attorney: I talked to her on the phone. She even told me about the hearing date.

Judge: Who is she?

Jones' Attorney: Lady from Top Rate Ice

Benson's Attorney: I only recently came into the case but Mr. Benson was present at the hearing. I don't know how a default was entered. . . . It could have been construed by the plaintiff to mean all defendants.

Judge: Particularly because the amount of claim does not require an answer.

When was date of pretrial?

Benson's Attorney: September 29. Default was entered September 29.

Jones' Attorney: She talked to me after that and said she'd appeared and the case was going to trial.

Judge: We'll set aside default, but there's no plaintiff. There is a cross claim?

Benson's Attorney: Yes sir, we filed one yesterday.

The rest of the short proceeding only hints at the complexity of the conflict. The judge dismisses the case because the plaintiff has not appeared and as far as he is concerned the court's function in this particular dispute is over. He instructs the attorneys to "draw up a dismissal with prejudice," adding "It's all up in smoke because the person didn't show up. They are going to be prohibited from suing again." At this point Chester Wong begins to ramble on angrily about the case. Jones interrupts sharply with "you know that's not true." The judge responds by telling them both to calm down. Benson's attorney adds, "I don't think we need to get into this at this point." The judge then ends the proceeding with "What I have done is wiped out the suit. If you still have differences between you, you need to work them out." As he stands to leave, Jones apologizes to the judge indicating that the case should never have been brought to the court but should have been settled in some other way. At the same time he denies any culpability: "We should have settled this down by the river. . . . I don't know how I was brought into this."

A later interview with the plaintiff fleshed out the details of the relationship between the defendants. Elizabeth Dewey is secretary/treasurer of Top Rate Ice and readily agreed to an interview when I telephoned her. Unlike almost all other litigants interviewed, she is not bitter toward her opponents.

She is a type of person who looks on lawsuits as interesting, as kind of an adventure regardless of the outcome. She began the interview with, "Now on this case it was not just Don Hsu's. There were two others -- John Benson and Panhandle Builders. You need to know a little about the history behind the case," and she proceeded to tell me the story from her point of view. Just before a new shopping mall was to open, the county health department inspected Don Hsu's food stand and was going to close it because the existing installation of a walk-in cooler/freezer was a fire hazard. Chester Wong called and requested that Top Rate Ice fix it. They fixed it, but they were not paid for their work. Chester Wong and John Benson, Don Hsu's architects, told Top Rate Ice not to worry that they would get paid. They also told Mrs. Dewey at Top Rate Ice that Panhandle, the builder, owed them money and they owed Panhandle money, but that after these bills were settled, they would pay Top Rate Ice.

Originally Top Rate Ice sent Don Hsu's the bill for installing the freezer. Don Hsu's did not pay Top Rate Ice but told Mrs. Dewey to send the bill to Panhandle Builders. Before she did so she called Panhandle and they said, "no problem. Go ahead and send the bill." She sent the bill to Panhandle and waited for months without receiving payment. Meanwhile Chester Wong went to Japan and three more months went by. When Chester Wong returned he told Mrs. Dewey that he still had not settled his bills with Panhandle and that she should collect her money from them. John Benson was trying to avoid the whole issue, although he too told Mrs. Dewey she should get paid. Apparently John Benson was responsible for the original problem with the freezer. He had sold Chester Wong the cooler/freezer and promised to have it installed. The cooler/freezer came from Miami in a flat box, and John Benson paid a friend

\$150 to "set it up." But the cooler needed to be "hooked up" as well as "set up." At this point John Benson contacted Panhandle Builders without Wong's knowledge and asked them to get someone to hook up the cooler, but, according to Mrs. Dewey, "they didn't do it right either." John Benson and Chester Wong then contacted Top Rate Ice. Top Rate Ice got the freezer running but they were never paid. Apparently the person contacted by Panhandle Builders was not paid either. In order to keep Wong from learning that the cooler had been hooked up twice, John Benson listed the cost of the first installation (\$650) as the cost of oriental screens. Chester Wong, however, caught him and refused to pay for screens twice. This situation caused a rift between Wong and Benson and according to Mrs. Dewey, "they are still friends but Chester is watching him [Benson] carefully." Because of Panhandle Builders' and John Benson's involvement in the original purchase and hook up of the freezer, Mrs. Dewey decided to sue them along with Don Hsu's.

Mrs. Dewey was also influenced in her decision to include John Benson and Panhandle Builders on the suit by what she knew of their reputations and by how they treated her. According to Mrs. Dewey, Panhandle has a terrible reputation in town, partially because they have declared bankruptcy. There is also apparently some strain in the relationship between John Benson and Panhandle's attorney. Apparently John Benson owes the attorney \$2000 for a case involving Benson's family. Mrs. Dewey had tried several times to arrange a meeting between herself and all three defendants in order to resolve the issue. The defendants, however, were never available at the same time. Chester Wong was willing to meet anytime but the owner of Panhandle and Benson were always busy.

In contrast to the relationship between the defendants, the relationship between the plaintiff, Top Rate Ice, and Don Hsu's is still good. "Our relationship with Don Hsu's is very good. They just bought new equipment from us and signed two new leases. That's why I didn't like taking them to court. They are a good customer, but I had no choice." Instead of reopening the case, Mrs. Dewey has talked to the young man taking care of Don Hsu's books. She asked him "to check his records and to find out who purchased what and who got paid. I think I know who the nigger in the woodpile is -- John Benson."

At the end of the interview she said she really didn't expect to get paid, but that she would make the money back with future work for Don Hsu's "A good relationship [with Don Hsu's] is more important than money. In my mind they don't owe, John Benson does. Between you and me his name will be mud. He will lose much more than \$400. All ours are commercial accounts. We have over 400 regular customers. Our reputation is very, very good."

As seen in the Lewis v. Lewis and Top Rate Ice v. Don Hsu's, John Benson, and Panhandle Builders, the complexity and the depth of the relationships between individuals can result in litigation. In these instances the court is only one step in an ongoing and complicated interpersonal dispute. On the other hand, too little knowledge of the opponent and too short a relationship can also result in problems which end up in court. For example, the problem in Tallahassee Chemical Inc. v. David Howard doing business as Quick Clean occurred primarily because Tallahassee Chemical knew nothing about the defendant before extending credit to him.

Tallahassee Chemicals Inc., a small local business, filed suit against David Howard d/b/a (doing business as) Quick Clean for \$593 for nonpayment of goods delivered to the Big Bend Truck Stop. On the day of the trial Steve Conrad, the

vice-president of Tallahassee Chemical was present. He was a large, middle aged white man, dressed in a short-sleeved shirt. He was represented by Bill Bales, a local attorney disliked both by the judges and clerks and by other attorneys. Bales was dressed in a yellow shirt and a gaudy plaid suit. He acted increasingly nervous as the trial proceeded. Conrad acted slow witted and confused. David Howard, who happened to be an attorney, was from Sarasota. He was dressed in a dark blue suit and wore darkish glasses and a diamond ring on his little finger. He appeared to be in his late 30s or early 40s. In contrast to the plaintiff, Howard was well prepared. He was quick to make objections and had even gone to the expense of hiring a court reporter, a rarity in small claims court.

During the trial the problem resulting from the lack of a relationship between Tallahassee Chemical and David Howard was revealed:

Bales: Would you describe your business association with Quick Clean?

Conrad: None at all, I was at the truck stop and I asked about. . . .

Howard: Objection. . . . Hearsay.

Judge: Sustained.

Bales: Have you ever met any of the principals of Quick Clean?

Conrad: No sir.

Bales: When was the first time you heard of them?

Conrad: One of the storekeepers got orders to take material to Big Bend Truck Stop.

Bales: In the course of business did you conduct an investigation of Quick Clean?

Conrad: Yes, I talked to Mr. Taylor at the truck stop. He told me Mr. Howard and Quick Clean.

Howard: Objection, hearsay.

Judge: Sustained.

Bales: Did you engage in a credit check of Quick Clean Inc.?

Conrad: I don't know.

Bales: Of Mr. Howard?

Conrad: Yes.

Bales: So what you believed was Mr. Howard doing business as Quick Clean?

Conrad: Yes.

Bales: What's your criteria for credit?

Conrad: I like to know the people, to go to other people and ask about them, to run a credit check. I've lost a lot of money.

Apparently Mr. Conrad broke all of his own rules in this case. He did ask about David Howard, but only after he had extended credit and had not gotten paid. Mr. Conrad also failed to check to find out whether Quick Clean was a corporation or a proprietorship. This is a crucial issue since corporation officers are not personally responsible for debts incurred by the corporation. The outcome of this case was swift and confusing and rested on the fact that Quick Clean was a corporation. After the plaintiff had presented its case, it was the defendant's turn.

Howard: I have nothing to say. He sued me as David Howard d/b/a Quick Clean. . . .

Bales: I don't feel I made the case. I'll take a voluntary nonsuit.

Howard: As to the entire case I object. I'm a resident of Sarasota. I don't belong here. It cost me \$200 to come here the first time and \$200 the second time and I had to engage a court reporter.

Judge: When you get back to Sarasota send me a letter.

(Bales acting very nervous, shuffling papers around.)

Howard: I just don't want to be haunted by this again. . . . I will send letter within two weeks.

Judge: Voluntary nonsuit as far as David Howard. If subsequent suit against Quick Clean we'll have to cross that bridge then.

Howard: Nonsuit only as to me.

Judge: All right case dismissed with prejudice.

Howard sent the judge an order to sign. The order read, "voluntary nonsuit to take the form of a dismissal with prejudice as to defendant David P. Howard, Jr., only." By signing the order, the judge was in essence declaring that the plaintiff had no basis for bringing the suit against the defendant.

An interview at a later date with the plaintiff's father, President of Tallahassee Chemicals, helped to clarify further the nature of the relationship between the two businesses. According to Mr. Conrad, Quick Clean "was a bunch of young fellows -- shysters -- who needed cleaning materials for a truck wash." The people at a local truck stop had recommended Tallahassee Chemicals to them. David Howard came to Tallahassee Chemicals and solicited an account in his name, portraying the company as his own. Tallahassee Chemicals checked his background, found his credit to be OK, and established an account in the name of David Howard doing business as Quick Clean. They delivered \$700 worth of goods to Quick Clean, but were never paid. After the court hearing, Tallahassee Chemicals' attorney called Mr. Conrad to say that Quick Clean was a corporation going through bankruptcy. At this point Mr. Conrad decided it was futile to pursue the case any further.

In several other cases besides Tallahassee Chemical v. Quick Clean one or both parties felt cheated by the other side. There was, however, an important difference between these cases and Tallahassee Chemical v. Quick Clean. In Tallahassee Chemical v. Quick Clean, the defendant received goods and never paid for them. Thus the plaintiff's feelings of being cheated were justified and easily understood. In other cases there is no clear evidence to support the magnitude and bitterness of some of the litigants' feelings toward their opponents. Litigants seem to be using the court to express more general feelings of persecution or cynicism. These complaints are not really against a single person or business but are directed toward society as a whole.

The case of Norris v. International Motors was over \$500 for car repair. Harry Norris, a young black man, came to court neatly dressed in an orange shirt, tie, and black pants. He was accompanied by a wife and small baby. During the trial he was very polite and sat quietly with his elbows resting on the arms of the chair and his fingers linked. International was represented by Ben Slate, an officer of the corporation. International is a local business and has been in operation for ten years. Mr. Slate, an older, tall white man, wore a brown suit, cowboy boots, and glasses. Both litigants were articulate, but hard to follow partially because of the technical nature of the dispute.

Mr. Norris brought his car to International to be fixed on November 26, 1979. He claimed he lost his gears on the way out of the place and that on the way home the oil light went on. After the light went on he claimed he stopped and added two quarts of oil. On December 4 the oil light went on again and this time the engine blew. Mr. Norris claimed that at this point he had stopped payment on the check he had written to International Motors. In response to Mr. Norris's story the judge asked: "You never paid this bill?" Mr. Norris

replied with: "No it was a squeeze play. He told me \$500 would take care of the whole thing. . . . I felt trapped. The engine blowing is not a coincidence. The seals should have stopped the oil."

Mr. Slate claimed that the check from Mr. Norris never was any good. He also claimed the engine blew on Mr. Norris's car not because of anything the mechanic in his shop did, but because there was something else wrong with the car. "The problem was not due to anything we did, the car threw a rod because of the bearing not because of a leak. The rod busted the case and the oil leaked out. . . . He gave us a bad check and said he would make restitution when problems with the car were fixed. . . . He used that as an excuse. I wonder if he has ever been honest with me. Any persecution is from Mr. Norris."

After an extended discussion between the judge, Mr. Norris, and Mr. Slate on what causes an oil light to go on, the judge indicated the hearing was over with "you two don't agree. I have to decide and I will, but I'm not ready to today. I will send you a copy of my decision in writing." After the litigants left the judge threw up his hands and said to me and the clerk "now what am I going to do about this case? I was as confused at the end as I was in the beginning." He continued that he thought it was up to the plaintiff to present a clearer case. "He has the burden of proof." He also thought perhaps the defendant was right about the plaintiff bringing the case as an excuse for the bad check. The judge was not without sympathy for the defendant, who obviously had a family to support and little money: "It tears you up every day, but then you can't make International pay for his problem. It seems that if they were a fly-by-night operation they'd be in here all the time. That's what I hate most about my job [this kind of case]."

In an interview Mr. Slate said it was the first time he had done business with the plaintiff. "As far as I know he just walked in off the street." He didn't plan to do business with him again not after "all the trouble he had caused." He thought Mr. Norris had lied about having to add oil since it is their policy always to check oil, water, and tires before returning cars. Mr. Slate was particularly upset by the uncomfortable position Mr. Norris had put him in by taking him to court. He felt unfairly treated by Mr. Norris and embarrassed to appear as a defendant before the court: "A man should fulfill his obligations. It's not right that a man should be put through this. It causes you a lot of worry. . . . It makes you look like a heavy."

This case did not end in small claims court. International had the state file criminal charges against Mr. Norris for the bad check. International also charged him for storage of his automobile. On the same day that the state brought charges against Mr. Norris for the check to International they also brought charges against him for a bad check written to a local store where he had previously worked. Mr. Norris agreed to make restitution on the check to the store, but contested the charge of writing a bad check to International. On the day of the trial he privately expressed to me general feelings of exploitation and frustration with the treatment he had received as a member of this society. He seemed to project these feelings onto International:

They are trying to get everything and I don't get nothing. . . . There's more prejudice in Tallahassee than in the whole state of Georgia. . . . I only make \$800 a month [as an exterminator] and I have three kids. How am I going to pay him?

He later suggested that the judge and International were in cahoots. "How did I know that International didn't pay the judge off?" Mr. Norris viewed his experience in small claims court as confirming his general perception that a black man in our society "can't win."

Like Mr. Norris, many other litigants thought the other side had not behaved decently or had tried to cheat them, although they did not extend these views to society as a whole. In all of these cases this was the first time litigants had done business with each other. For example, Rose Stephens filed suit against Dan Campbell, owner of Auto City, for not honoring a coupon for a "free" oil change she had purchased from another company. She was mad because he had apparently honored such coupons for other people but not for her. He said he would have changed the oil but that she came at the wrong time. During the trial she said, "I have a witness your honor to prove he said he wasn't going to do it. . . . I couldn't see any difference [between herself and the others for whom he did oil changes]." During an interview she was angry not only because he had not changed the oil but because "he lied." "We went outside [during the pretrial] and Dan Campbell said I don't owe you a damn thing. I don't own the business. I just work there. When I went there he said he was going out of business and. . . 'I've lost my ass changing oil on these tickets' and he wasn't going to change mine. I asked him why he'd put them in the book and he said he didn't have anything to do with it and walked away. I told him I'd take him to small claims court. I went right on to court that day." Dan Campbell did not do anything to improve his relationship with Mrs. Stephens after she filed the claim against him. As he said, "I knew she was wasting her time" and would not win in court. He had not paid to have the coupon put in the book, and thus apparently had no legal responsibility to honor it. The

representative of the company that put the book together had come to his shop and told him including a coupon for a free oil change would bring him a lot of new business. He agreed after the representative told him only a limited number of books would be printed and sold. The coupons brought Mr. Campbell many more people than he expected. According to Mr. Campbell, he changed oil for free for several hundred persons before Mrs. Stephens arrived. At this point he was in the process of going out of business and simply did not care whether he angered her. He no longer viewed the coupon holders as potential customers, but as nuisances.

In Home Lighting v. Massadourian the business owner also refused to compromise with the consumer, but for different reasons. In this case the business owner was not going out of business and thus indifferent to customer complaints as Mr. Campbell was. Instead, Mr. Marin, the owner of Home Lighting, and Mr. Massadourian found themselves embroiled in a classic personality conflict. Mr. Massadourian, a middle-aged accountant of Armenian descent, originally from France, had purchased a lighting fixture from Mr. Marin, owner of Home Lighting, on a Friday. Mr. Massadourian had never met Mr. Marin before but he had been recommended by an electrician friend. On the day of the purchase, Mr. Marin had been very pleasant and Mr. Massadourian felt that their relationship, although just beginning, was good. When he tried to return the item on the following Tuesday and Mr. Marin refused to accept it, Mr. Massadourian was shocked: "When he wouldn't take it back, my temper flared up. He had been very congenial on Friday. He even tried to speak to us in French even though his French is not very good. It's the kind of French they speak in Louisiana. It's a lot like Canadian French." His wife, who had accompanied him to Home Lighting, added, "He was very nice. I

commented to my husband on the way out what a nice man he was. Maybe that's a trick he uses to get you to buy." Her husband continued, "On Tuesday, he was a completely different person. I was shocked. I know he has a different policy for different people." Mr. Marin defended his return policy. He explained that it is very expensive to allow a customer to return a lighting fixture. For safety reasons if the box has been opened the item cannot be resold and must be returned to the manufacturer. For this reason Mr. Marin only accepts items returned within 24 hours, a policy that is clearly posted in the store. Mr. Marin further felt it was Mr. Massadourian who had behaved unreasonably: "When he came back in and I said he couldn't return the fixture, he became very mad. He nearly went through the roof; I thought he was going to rip the door off . . . now, I have a temper, too. If he hadn't gotten so angry, I probably would have tried to work something out with him, but he immediately threatened me with court and then went to Action Line." Both Mr. Massadourian and Mr. Marin thought the other had acted inappropriately. Because Mr. Massadourian had responded so angrily to Mr. Marin's return policy, Mr. Marin was stubbornly unwilling to make an exception.

Friends as well as businessmen and customers may also file suits against each other if the relationships goes awry and if there is something to fight over that may be translated into monetary terms. The relationship between roommates fits these criteria, and in fact several cases between ex-roommates were observed in court. Again, the key to understanding why is, as one litigant said, "not the money but the way he treated me." As in cases involving businesses, these litigants have no intention of having anything to do with each other in the future.

Outsiders (i.e., those not appearing in court) were found to be another key element in the escalation of many cases. As indicated in the Lewis v. Lewis case, in order to understand the processes that have brought a case to court, one frequently must look beyond the persons present in court. In several cases, settlement between litigants was hampered by intervention from outsiders. In one case, two black girls who worked together and were friends--"we were friends. We had breakfast together every morning"--ended up in court because one had lent the other \$100 so she could move away from her boyfriend who was beating her. But she went back with him and never paid the money although she kept promising she would. They were both present at the pretrial, and the judge sent them into the hall to negotiate. But as the plaintiff recounted in an interview, the defendant's boyfriend was waiting in the hall and she didn't get a chance to talk to her. The defendant's boyfriend kept telling the defendant to tell her she would pay a dollar a day. "I didn't get to talk to her at all."

In another case, it appeared the defendant had refused to settle because of allegations made by another party. Reba Snow, a young black college student, had purchased a guitar from Brian Byron, a young white guitar teacher, from an advertisement in the Flambeau, the Florida State University paper. Apparently, her guitar teacher had told her the instrument she purchased was worthless. During the trial the defendant said, "I offered to refund her money under the condition that he [the guitar teacher] meet with me . . . to make him face me. When I called him up he was very pompous. He said it had a buzz that could never be fixed. If it was just Reba who was dissatisfied, it would have been different, but he should have at least faced me."

Although most people in small claims court appeared to have no relationship prior to the incident over which the case was filed, an acquaintanceship, of

which the other party may not even be aware, may have an effect on a person's decision to file a court suit. This occurred in Walters v. Charles, an automobile accident case. Mrs. Walters, an attractive woman in her 50s, claimed she was backing out of a parking place outside of her daughter's apartment when Mr. Charles, a 30-year-old white male, sped around the corner and hit her. Mr. Charles alleged that Mrs. Walters had backed into him. When the police officer arrived on the scene Mrs. Walters was crying and trying to tell her story. The policeman apparently did not want to deal with an emotional female, so he routinely ticketed her and left. Later in traffic court the citation was dropped. Ms. Walters reported in an interview that her daughter had previously seen Mr. Charles "racing through the complex." She did not know who he was; she just knew the car. He would go so fast she was afraid for her children. Her daughter even called the apartment office to get him to obey the speed limit. She continued, "This man is dangerous. That's why [we brought the case to court] to get someone to set him straight, maybe. It will make him think, but he still speeds. . . . He was a jerk. He has no regard for other people. We did it for the good of the community. We'll never see his face . . . the dirty little creep. He left, he broke the law, he lied, he gave the wrong insurance company." Mrs. Walker believed that Mr. Charles would continue to show total disregard for other people. She was not concerned about her future relationship with him since she never intended to see him again. Rather she was concerned about the harm he might inflict on other people. She had hoped the court would punish him for his antisocial behavior. She lost the case, however, because she had failed to bring a mechanic with her to testify at the trial. Mr. Charles had an attorney who refused to accept a written estimate. The other party has the right to question the estimation and may refuse to

accept another estimate as hearsay. The judge then dismissed the case because the plaintiff had failed to prove damages.

Summary and Conclusions

This chapter began with the general question of access to formal dispute settlement forums in complex societies. Anthropologists have argued that in complex societies, in contrast to many tribal and village societies, access is limited for the average citizen. A similar argument has been made by critics of small claims courts who believe the individual has been forgotten as the court has become dominated by businesses and attorneys. Individuals when they do appear in the court are most likely to be defendants. These general ideas were translated into a series of specific hypotheses which were tested based on data from the Leon County small claims court. Analysis of these data supports some of these hypotheses and brings into question others. Even when the hypotheses appeared to be true, they were frequently modified by unexpected factors.

Organizations were found to bring more cases to small claims court than individuals. The majority of plaintiffs (83.4 percent) in the case file sample were businesses, service professionals or landlords; whereas the majority of defendants (80.7 percent) were individuals or tenants. Businesses and professionals were most likely to be suing private citizens. Only 6.9 percent of all cases consisted of an individual suing a business. Nearly all business defendants, and many business plaintiffs as well, however, were small, locally-owned businesses, not large and powerful national corporations.

The relationship of attorney representation and status of the litigant was not found to be as simple or straightforward as the original hypothesis "higher status persons and organizations are more likely to have attorneys" suggests. In the case file sample, 36 percent of the plaintiffs had attorneys and 7.2 percent

of the defendants had attorneys. Attorney representation, however, was not found to be related to the type of plaintiff. Business and nonbusiness plaintiffs were almost as equally likely to be represented. The probability of plaintiff representation did appear to be modified somewhat by type of opponent: individuals bringing suits against each other appeared to be less likely to be represented than either businesses bringing suits against individuals or individuals bringing suits against businesses. Individuals suing businesses may hire attorneys in an effort to balance their side against what they perceive to be a more powerful opponent. Among defendants there was statistically significant relationship between type of defendant and attorney representation. A much higher percentage of business defendants than nonbusiness defendants were represented. Analysis of questionnaire data from the Florida Supreme Court study also suggested that status was not directly linked to attorney representation. The highest status litigants, in terms of income and education, were not those most likely to be represented, although they were most likely to have consulted with an attorney outside the court proceedings. Those most likely to be represented were in the middle income brackets. Analysis of pretrial observations revealed that male and white plaintiffs were more likely to be represented than female and black plaintiffs. This relationship was not found for defendants: approximately equal percentages of male and female defendants and black and white defendants were represented by attorneys. In the case file sample, females were as likely to be represented as males, regardless of whether they were plaintiffs or defendants. Crosstabulation of

failed to show any significant relationship. In sum, many factors appear to influence attorney representation. It was found that the most powerful opponents are not always the ones most likely to be represented by attorneys.

Socioeconomic status, race, and sex were also hypothesized to be related to the frequency with which people bring cases to court, with higher status people bringing more cases. In the pretrial observation sample, approximately equal numbers of males and females were plaintiffs, while more males than females were defendants. In relation to their proportion of the county population, whites were overrepresented in the sample of plaintiffs, and blacks were overrepresented in the sample of defendants. Plaintiffs further tended to be younger, better dressed, and more attractive than defendants. The variables observed during pretrial hearings, with the exception of sex, point to the lower status of defendants vis-a-vis plaintiffs. Appending census tracts to the case file sample of all plaintiffs and defendants, however, failed to show any clear differences between plaintiffs and defendants in terms of residence, income and race.

There are at least two possible explanations for the discrepancy between the findings based on address matching to census tracts and direct observation. More lower status than higher status defendants may appear in court. Higher status persons may actually default more than lower status people because they are ashamed of being called as a defendant. During interviews, several middle-class defendants reported being embarrassed and anxious about their status as defendants. Several others refused to be interviewed. Another explanation is that appending census tracts is a rather crude measure of socioeconomic status. There may be a great deal of variation within a tract. Also the sample size was relatively small. Originally, it was intended to match addresses with census

block data yielding a much more accurate indication of socioeconomic status. This was not possible because address matching programs were unavailable. This second explanation is considered the most plausible. The results of pretrial observations are thus considered more reliable than the results of address matching. It may therefore be concluded that as a group defendants do appear to be more socioeconomically disadvantaged than plaintiffs.

It was also hypothesized that higher status people would be less likely to default than lower status people. Examination of productivity of defaulters and income and racial composition by census tract, however, failed to show any relationship. A more detailed study is obviously needed. Such a study may show that it is incorrect to identify defaulters solely as marginal members of society.

The data from the case studies further complicate the issue. Plaintiffs and defendants in case studies varied from litigants in general. Nearly twice as many were males as females, and the racial composition of this sample more accurately mirrored the general county population, with fewer differences between plaintiffs and defendants. Nearly all litigants were young or middle-aged, and there was little difference between the dress and appearance and education and occupation of plaintiffs and defendants.

Statistics gathered in this study support the hypothesis that most law suits in the United States are between strangers. The overwhelming majority of cases in Leon County small claims court appear to be between persons who do not know each other, with organizations typically suing individuals. Of the more than 500 cases observed during pretrial hearings, there was no evidence in over 90 percent of the cases that the relationships between litigants entailed more than a single business transaction. In contested cases, a slightly different

situation emerged. Businesses suing individuals (whom they may not have even met) were not the most common type of case. Cases in which individuals were suing either other individuals or businesses were much more likely to be contested than cases in which businesses or professionals were suing individuals.

In case studies, even cases that appeared to be over a simple business transaction turned out to be complex. The transaction itself was frequently only the formal expression of a considerably deeper and more complicated conflict. Outsiders were found to play a key role in escalation of many of these conflicts. Although rare in terms of numbers in relation to all of the cases filed, conflicts between family members, ex-friends, and neighbors are filed in court. These conflicts are invariably complicated as has been shown by the examples presented in this chapter and consume a great deal of the court's time, although in the end, the court is unable to deal with them effectively. In order to understand this phenomenon, the behavior and attitudes the legal participants bring to court must be examined. These are the subjects of the next chapter.

Notes

¹ A test of statistical significance, chi-square, was used to help determine if there is a systematic relationship between the two variables. In general small values of chi-square indicate an absence of a relationship, i.e. statistical independence, and large values imply a systematic relationship of some sort. Associated with each chi-square value is a probability (also referred to as significance level). This value indicates the probability of obtaining a value of chi-square as large or larger than the one calculated when the variables are in fact independent. In the social sciences a probability of 5 percent (significance of .05) or less is usually accepted as statistically significant. Because chi-square primarily helps determine whether variables are independent or related and not how strongly they are related, three measures designed to indicate the strength of the relationship were used. These statistics are known as measures of association and indicate the extent to which prior knowledge of a case's value on one variable better enables one to predict the case's value on the other variable. Cramer's V (or Phi in a two-by-two table) makes a correction for the fact that the chi-square value is proportional to the sample size. Its value is 0 when there is no relationship and +1 when variables are perfectly related. Lambda measures the percentage of improvement in the ability to predict the value of the dependent variable knowing the value of the independent variable. Thus a Lambda of .42 means that the ability to correctly predict the value of the dependent variable knowing the value of the independent variable is increased by 42 percent. The maximum value of 1 means perfect prediction and minimum value of 0 means no improvement in prediction. Lambda is not the most appropriate statistic for variables that are dichotomies. Dichotomies may be considered ordinal or interval, and in these instances, gamma (which measures essentially the same relationship as lambda) is more appropriate (Nie et al. 1975).

² It was originally intended that attorney representation would be crosstabulated with personal characteristics such as age, dress, general appearance, and language as well as demographic characteristics such as sex and race. However, the pretrial hearings occur so rapidly (many lasting only about a minute) that it was impossible for the observer to note all these characteristics for each participant as well as to record the dialogue that occurs between the judge and the litigants. This dialogue is not recorded in small claims court as it is in other courts. As a result much of these data are missing. Tape recording or videotaping would solve much of this problem in future studies. If these methods are not feasible, at least two observers should be used--one to record the dialogue and the other to note the characteristics of the litigants.

CHAPTER 5 THE LEGAL PARTICIPANTS

Past studies of small claims courts have generally failed to examine the attitudes and behavior of judges, clerks, and attorneys and have instead focused on the characteristics of the litigants. A few researchers have interviewed small claims court judges (Ruhnka et al. 1978; Hollingsworth et al. 1973), but none have systematically observed legal participants and their interactions either among themselves or with litigants in small claims court. By ignoring the legal participants, most studies present a one-sided view of the court. Judges, clerks, and attorneys are obviously as important as litigants for understanding the function and workings of the court. It is the attitudes and personalities of these individuals as well as their interactions with each other and with litigants that determine the outcome of cases in small claims court. As Eisenstein and Jacob have observed in reference to felony courts, "because persons, rather than machines, process charges against defendants, personal characteristics of principal actors such as judges, prosecutors, and defense counsel are significant" (1977:10). Outcomes, however, "are not the result of singular efforts by judges, prosecutors, or defense counsel. Outcomes result from interactions among the courtroom members and others. They not only interact with one another but also become dependent one on another" (1977: 294).

In general, anthropologists also have been more interested in the clients of formal organizations than in the organizations themselves. This has not always been the case. In the 1930s and 1940s many anthropologists turned their attention from studies of "primitive" cultures to studies of formal organizations in the United States (Roethlisberger and Dickson 1939; Warner and Low 1947). Anthropologists were in fact a major force in the development of organizational behavior research (Whyte 1973). For example, W. Lloyd Warner returning from a study of Australian aborigines became part of the classic Western Electric study, which documented the importance of understanding the informal organization that arises spontaneously within formal organizations. Yet as Whyte points out, "this strong beginning justified hopes that organizational studies would become a major field for applied anthropology. Yet in succeeding years very few anthropologists joined these pioneers" (1978:130). After World War II anthropologists for the most part returned to academe and to the contemplation of abstract problems, primarily based on data from non-Western societies (Eddy and Partridge 1978).

In the subfield of anthropology and law, most fieldworkers, like those in other subfields, have studied village and tribal societies. Third parties in these societies not only know the disputants but they share values and attitudes with them (Epstein 1967; Gulliver 1971). Their everyday lives differ little from those of the disputants. In contrast, in complex societies formal organizations and groups of professionals have evolved to settle disputes. It cannot be assumed in complex societies that members of the legal profession and staffs of formal legal institutions share values and attitudes with litigants. The disparity between values of members of formal dispute settlement organizations and disputants may create what Bohannon (1967) terms a "working misunder-

standing" whereby the litigants have no idea why one decision was reached instead of another. As Nader (1972) has urged, anthropologists must begin "studying up" as well as "studying down." Citizens need to know something about the subculture of the institutions that affect their lives in order to function effectively in modern society. In this chapter the attitudes, values, and behavior of judges, clerks, and attorneys both toward each other and toward the litigants will be described. The litigants' attitudes toward the judges, clerks, and attorneys also will be presented. The question of the disparity between the values and attitudes of the legal participants and those of the litigants will be addressed in the next chapter.

The Judges

The judge's role has been considered one of the most problematic aspects of small claims court (SCCSG 1972; Domanskis 1976; Ruhnka et al. 1978). An original goal of small claims courts was to simplify procedure in order to decrease delays and to permit individuals to file or defend a suit without counsel. The diminished role of attorneys, however, necessitated a change and expansion in the role of the small claims court judge. Under the traditional adversary system, the judge depends to a large degree on attorneys to bring out the facts and to point out relevant aspects of the law. But in small claims court, the judge frequently has to determine the facts and research the law without the aid of an attorney. Judges are also instructed by court rules or by legislation to make an honest effort at conciliation before issuing a judgment. In Florida, for example, the Rules of Summary Procedure instruct the judge serving on small claims court "at any time before judgment to make an effort to assist the parties in settling the controversy by conciliation or compromise" (Rule 7.140(d)). The judge is further required to "assist any party not

represented by an attorney on (1) procedure to be followed, (2) presentation of material evidence, (3) questions of law" (Rule 7:140(e)). The rules of evidence apply to summary proceedings, "but are to be liberally construed" (Rule 7.140(f)). The ambiguity of these instructions along with the combining of adjudication and conciliation into a single role has resulted, as the following description of the judges in a single court will show, in difficulties both for the judges and the litigants. Wide variation was also found in the ways in which the different judges perceive and deal with small claims cases.

When research began three judges were serving on small claims court. In many ways these judges were similar to one another: all were white, male Protestants and all received bachelor's degrees from the University of Florida. Two graduated from Stetson Law School and one from the University of Florida Law School. They had each served on the court from eight to ten years. Two of the judges came from large and well-known Tallahassee families. One of these judges was in his fifties, the other two were in their forties. Although there are many similarities among these men, there are considerable differences in their personalities and in their attitudes toward other members of the court, members of the legal profession, and litigants.

Judge Ryan was the first judge encountered by the researcher. It took nearly two months to get an appointment to see him. Because he was the chief administrative judge at the time, it was felt that the project should be discussed with him first before the court was observed or other judges interviewed. On the day of the appointment, Judge Ryan darted into his office twenty minutes after the scheduled meeting time and twenty minutes later called me into his office. He has the easy manner and quick smile of a natural politician. In the courtroom he jokes readily with deputy clerks as well as with

regular litigants. Judge Ryan is a short, nice looking man with thick gray hair, a susceptibility to stomach upsets, and a preference for double knit suits. He is married, has two children, and lives in a relatively new neighborhood, considered fashionable by the upwardly mobile. His wife is a successful saleswoman for a cosmetic firm. Judge Ryan's bachelor's degree is in business administration.

He expressed several concerns about both the types of litigants in small claims court and the court itself as it is presently structured. "Many cases," according to Judge Ryan, "don't belong in court. They need a psychologist." After several months of research he asked me what I thought of the cases in small claims court. I replied that the court appeared to have two different functions -- processing of routine, uncontested bill collection cases and hearing "trouble" cases, which entailed a lot more than what was presented to the court. In response, he said "I'd add a third type -- disputes between reasonable people." As an example he described a case he had recently heard involving an air conditioner. According to Judge Ryan, both sides in this case thought they had a valid point. The plaintiff's air conditioner had blown up, but the store that had sold and installed the air conditioner refused to pay for it, contending that it blew up because of lightning. The air conditioner was not under warranty and the plaintiff had not yet purchased homeowner's insurance. Judge Ryan ruled that the damage was caused by lightning and therefore the air conditioning people were not liable. "These kinds of cases don't make me mad," but others apparently do as he continued by talking about the case presented that morning. Smith v. Weeks entailed a suit brought by a black, female landlord against a black male tenant. The landlord and the tenant disagreed about the length of time he had rented a room from her. He stated he had paid

for and only stayed a week, while she contended he had stayed several days longer. The woman brought her two daughters to testify in her behalf. They had obviously been prompted by their mother and became quite confused when the judge questioned them. Judge Ryan summarized his feelings about the case with "someone was lying. They had to have been. . . Now who do I believe? I resent those kinds of cases." He ended up ruling for the defendant because he thought the plaintiff had not proved her case.

Although Judge Ryan appears to resent many cases in which neither party is represented, he states that he considers cases in which only one party is represented to be the most difficult: "the best cases are those in which neither party is represented, the next best when there are two lawyers, although these can be long winded. Sometimes I have to say 'do you have anything new to say?' The worse are those where one party is represented." Judge Ryan is not sure how to help one side and still remain impartial. In reference to the Lewis v. Lewis case described in the last chapter, he said he had asked the plaintiff more questions than he likes to in an effort to get her to return to what he considered the legal issue to be. He continued that his behavior could get him in trouble for malpractice. The court clerk, in a private conversation with the researcher, confirmed the judge's view: "Some attorneys would have called his hand. He was putting words in her mouth. . . . He was acting like a lawyer and not a judge."

Judge Ryan expressed further confusion about his role in the court. Summary procedure is supposed to be informal, but the judge is still bound to follow the rules of evidence. He mentioned repeatedly that his role is to find the facts and to apply the law, but that normally you depend on the lawyers to bring out the facts and to point out the relevant law. "Legal problems can be as

complex in small claims court as anywhere," he continued. He further believes the small claims court judges should not act as mediators or arbitrators, "but in any case principles of law should apply whether you have arbitration, mediation, or adjudication." He stressed the importance, almost reverence, for laws developed over the centuries.

Judge Ryan summarized his view of his role and the role of attorneys in small claims court during a pretrial hearing. The plaintiff was an individual suing an employment agency. The employment agency was represented by an attorney. The plaintiff, obviously threatened by the presence of the attorney, questioned the judge about the need to retain an attorney in small claims court.

Plaintiff: Would you suggest I retain an attorney?

Judge: That's your decision.

Plaintiff: But when it comes to trial

Judge: I don't know you can always represent yourself

Plaintiff: Should I get an attorney?

Judge: Get one if you would feel more comfortable

Plaintiff: But I would feel more comfortable.

Judge: Although this is small claims court, it is still a court and the evidence presented must be good. Attorneys are trained to do this. . .

Plaintiff: Go no further

Judge: The help we can give is limited

In another instance, the judge tried to console a plaintiff who has lost in an automobile repair case. The small claims case Norris v. International Motors was described in detail in Chapter 4. Not only did he lose the small claims

case, but International Motors had the state bring criminal charges against him for the bad check he wrote. The following discussion occurred during the criminal trial for the bad check:

Defendant: I have all this against me. I have no legal representation. I thought the check was involved in the small claims case and then I received a note from Mr. Slate about selling the car and the bill went up to \$800. You said they could take the car. The first time I went up before you, you said the check had a bearing on the small claims case and for me to plead not guilty. I thought it was over when I got the statement from you. I thought I had lost the car.

Judge: Let me explain. This is the sequence as I understand it. You took your car to International. They did \$210 worth of work. The check is a contract. You agreed to pay. The check was not good. Checks are a bill of exchange. Theoretically, in law, checks are just as good as money. By giving it you are warranting that it's good. If your repair job has gone sour, you can't stop payment anymore than you can take money out of the cash register in the eyes of the law. Sometime later, you had substantial trouble with your auto and you sued them. It's a basic principle of law--anyone suing has the burden of proving the case. It's a heavy burden if you are not trained in the law or an auto mechanic. You were trying to satisfy me that their work was the cause [of the engine blowing up] and it may have been, but you didn't convince me. I ruled that you had not carried your burden. I didn't rule on the check. That was not the issue. In the civil cause, the issue was whether they were responsible. I'm simply saying you didn't prove your case. It's tough to prove. I don't know if I could have proved it. It's hard for a person not trained in the law and

with no money to call expert witnesses when the defendant is more trained in the area than you are. It's a problem with any technical field. The case was over \$210. If you get lawyers and expert witnesses, you may spend more than that.

Judge Ryan, although he may redirect the litigant's conversations during hearings, and although he may intellectually recognize the problems of unrepresented litigants, actually gives little help to unrepresented litigants. He generally fails to make a distinction between lawyers and nonlawyers in court. Individuals appear to be penalized for not being attorneys. Expressing the belief that people deserve only one day in court, he will not continue a case in order for unprepared, unrepresented litigants to subpoena witnesses or to collect evidence. In one case, he ruled against a litigant partially because the litigant had not behaved in the way an attorney would have: "He [the litigant] made a mistake. Of course, not being a lawyer, he wouldn't have known." The mistake was saying he was an expert in car repair without offering any proof such as a description of his education or experience. Judge Ryan also refuses to announce or to explain his decision to litigants in court. Even if he has made up his mind, he has the clerk's office mail his decision to the litigants at a later date. He justifies this behavior by saying that he likes to give the parties an opportunity to "cool off" before receiving the decision. He also does not want to have to face dissatisfied people. He believes "law cases are never over and people are never satisfied." He does not feel he has done his job if one party is very satisfied and another is very upset.

In the American legal system, there are important distinctions between criminal and civil cases. The judges, however, usually deal with both types of cases. In criminal cases, the defendant has a right to an immediate trial, but in

small claims cases, Judge Ryan feels that there is a need for a "cooling off" period between filing and pretrial hearings. He told the head deputy clerk that he was scheduling pretrials too fast and to change the time period between filing and pretrial from one month to two months to give people the opportunity to resolve their grievances without intervention from the courts. Interviews with litigants, however, revealed that the act of filing marked the severing of the relationship, and none of the litigants even communicated with the another between filing and pretrial hearing.

In sum, Judge Ryan is somewhat of a contradiction, both in his attitudes and his behavior. At times, he appears to be genuinely sympathetic toward unrepresented litigants while at others he appears impatient because they are not behaving in ways appropriate to attorneys. He is also ambivalent toward attorneys. On the one hand, he believes they are necessary for bringing out the facts and pointing out the law, while on the other he claims he prefers cases in which there are no attorneys. He is very uncertain about the extent he should assist unrepresented litigants. He also is uncomfortable when dealing with cases in which two people obviously disagree, but their disagreement does appear to entail any legal issues.

Judge Cain, like Judge Ryan, is in his forties and attended the University of Florida and Stetson Law School. After college, he joined the Marines. As an attorney he worked first for the state and then for a private firm before being appointed to the bench seven years ago. Many of the men in his family, including his father, brother, uncle, and grandfather were or are lawyers. He wanted to be a lawyer since he was a boy in Madison, a small town near Tallahassee. Judge Cain is a slight man with dark hair and glasses and a taste for expensive, conservative clothing. He was always very pleasant and polite to

the researcher and kindly explained cases and answered questions. He is politically ambitious and would prefer to be a circuit judge rather than a county judge. It is also rumored that he plans to run for attorney general.

Judge Cain does not appear to be as confused about his role in small claims court or about attorneys as Judge Ryan is. He considers his role to differ little from his role in other types of cases in which the judge listens to the two sides presented by the two attorneys and then makes a decision. I asked him how he handled complicated cases in which there appeared to be a lot more involved than the actual money claim. He replied with "I don't dig; I just listen to what they tell me," a reply consistent with the classic role of the judge as a passive, somewhat aloof third party. When one side has an attorney and the other does not, he reported taking a slightly more active role: he usually takes the cases under advisement and researches the law.

Judge Cain, however, does believe the person without an attorney is at a real disadvantage in small claims court. In addition, he thinks not having attorneys is difficult for the judge, who must then face the public directly. In other courts, the judge is, in a sense, protected from members of the public by lawyers who serve as intermediaries. He strongly believes that litigants should have lawyers and that having clerks or paralegals assist litigants "would be like having a nondoctor operate on you." Attorneys, in Judge Cain's mind, are not only useful insofar as they point out relevant law and bring out facts for the judge, but they are also helpful in resolving the dispute: "They will sit down with the parties and work things out," according to Judge Cain.

Like Judge Ryan, Judge Cain believes that certain types of cases and certain types of behavior are inappropriate for small claims court and should be resolved in some other fashion. He characterizes these cases as "arguments

over principle": "If someone who wanted to argue over principle came to me when I was in private practice I would tell them what it would cost them and would suggest they go to the other side and try to work out a compromise." These people--those who argue over principle--are, according to Judge Cain, more emotional than people who argue over money.

Any kind of open conflict makes Judge Cain uncomfortable. His characteristic approach to conflict in his personal life is avoidance, while his approach in his court is intolerance. He believes that if a conflict cannot be translated into legal terms, it should be ignored. Yngvesson (1978) found a similar attitude among high-status members of a Scandinavian fishing village who denied the very existence of disputes among themselves. In reference to a cousin who is always fighting with his wife, Judge Cain said, "It makes me uncomfortable. I don't like to be around them." He also does not like it when he comes home and his children come running to him with their problems before he has a chance to get out of the carport. A neighborhood dispute further illustrates Judge Cain's view of the appropriate way to deal with problems. Two dogs kept getting into his garbage and strewing it across his backyard. At first, he jokingly said he considered poisoning them, but instead he made a big pen for the garbage cans. I asked him if he had considered talking to the dogs' owners. Judge Cain was surprised by my question and replied "no," that it was a nice neighborhood and he did not want to do that. During court hearings, Judge Cain takes a more active role when open conflict threatens to disrupt the proceedings. He quickly lets the litigants know his attitude. After one case in which the litigants were particularly bitter, the judge said, "they are not going to spew poison in my court."

Judge Cain does not believe it is the judge's role to help people resolve their conflicts. He does try to give information to people during pretrial hearings about what they will need at the final hearing, but he believes people do not listen or remember what he says. If written information were given, he believes people would not read it. He also thinks people in our society "expect everything to be done for them." "You can't protect people from cradle to grave," according to Judge Cain. He further believes people will be happier if they can work out their own problems instead of having decisions imposed on them. A recent innovation in Florida known as Citizen Dispute Settlement in which the third party makes an active effort to help the party reach an agreement is, in Judge Cain's mind, "a step backwards."

Judge Cain believes that in the great majority of cases filed in small claims court there is no dispute. According to Judge Cain, most disputes in the court are over automobile repairs, appliance repairs, and landlord/tenant issues. He also reported that recently there has been a spate of employment agency cases in which "people are really bitter." In 90 to 95 percent of the cases in which the defendant defaults, Judge Cain believes the defaulters know they owe the money and are just putting off the inevitable. However, Judge Cain acknowledged that some people, especially those in the black community, thought they could be put in jail for debts. Many of these people, according to Judge Cain, equate courts and judges with the sheriff. They are thus afraid of the court, not because they have no experience with the law, but because the experience they have had with it has been negative. Judge Cain continued his discussion of defaulters by recounting a long list of excuses people use for not appearing in court. In a criminal case, one man even called his secretary and told her he had died. "We sent the sheriff out there and found him dead drunk."

If people miss court, he makes them bring written excuses from, for example, a doctor. He continued that many of them "are a lot like children."

Judge Cain is aware of abuses that occur between businesses and consumers and also on occasion between attorneys and their clients, but he does not believe it is his job to act on these or to even point them out. He assumes an extremely passive role and only responds to the issues as they are presented by the litigants. For example, he acknowledges that many small loan companies operate on the edge of the law, but he routinely rubber stamps judgments for them without carefully examining the contracts litigants have signed. Many of these contracts are written in such a way that they are extremely difficult to understand. For example, the following is found in bold letters on a standard loan note from a small loan company:

The following notice will/will not apply to this loan. Any holder of this consumer contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained with the proceeds thereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.

I was totally confused by this statement and asked Judge Cain what it meant. After reading it several times, he said he was not sure what it meant but since it was in bold letters it was probably required by law. He added, "I'd hate to have to make a ruling on it in court." In giving routine defaults to the small loan company on this note, he is in effect ruling on this statement. As Klein states,

Ordinarily, it is the defense attorney's job to call the court's attention to aspects of the law. But when, as in the usual consumer case, there is no defense attorney, the burden falls on the judge to make sure he and his court are not being asked to enforce an illegal or unfair contract. (1971:628)

On another occasion, Judge Cain commented that he was disappointed in the way an attorney had handled a case. He made the analogy between the

attorney's performance and a doctor putting you on the operating table, opening you up to take your appendix out and then saying, okay, since I have you opened I'll take out your stomach. Because of the attorney's obvious incompetence, the attorney's client never had a chance to win the case. The judge felt sorry for the client, a middle-aged black woman, but said the poor presentation of her case by the attorney was between her, her attorney, and the ethics or certification commission.

Criminal cases appear to hold a particular fascination for Judge Cain. He frequently recounted for me his experiences hearing criminal cases. Although he appears relatively mild mannered during small claims hearings, he considers himself a tough "law-and-order" man: "I don't want you to think I'm blowing myself up in importance, but I think it's important for people in the community to be a little afraid of the judge. It's easier to be more lenient that way than it is to be strict if you have a lenient reputation." Judge Cain is also a strong supporter of the death penalty, stating that it is a deterrent "at least in that one case and it would be in others if it were certain and swift." He thinks hangings in the public square were an effective deterrent and compared criminals to children: "If you put their fingers in an electric socket, they immediately learn." Judge Cain's sentences in criminal cases have been the subject of several articles in the local paper. In one instance, the judge gave a jail term to a woman who had repeatedly bounced checks. Only rarely do judges sentence check bouncers to jail. In another instance, he was sitting on the circuit bench hearing a case against a man for raping his cousin, an eight-year-old girl. Against the recommendations of the jury, the victim's mother, and the state attorney, he gave the death sentence. His action brought the following response from the editor of the local newspaper: "Whatever his intention,

[Cain] made one thing clear. Judges who spend most of their time dealing with traffic tickets and other misdemeanors, as he does, should not be allowed to sit in judgment in cases involving life or death."

At times, it appears that Judge Cain confuses criminal and civil defendants. During a discussion of disadvantages faced by unrepresented litigants, such as the speed at which cases are processed during pretrial and the intimidating atmosphere of the courtroom, he said "you have to scare them a little." Judge Cain also made slips of the tongue on two occasions during pretrial hearings when the defendants were present, but the plaintiffs were absent. Instead of saying "I'll dismiss the case," he said "I'll dismiss the changes," which would be the appropriate response in criminal cases. It appears that equating civil and criminal defendants places the defendant in civil court at a real disadvantage vis-a-vis the plaintiff.

Judge Cain is also harsh toward the deputy clerks who serve on small claims court. He stresses that "clerks are supposed to take whatever people bring them. The cases are none of their damn businesses." He is very much against expanding the role of clerks, even though many unrepresented individuals come to court unprepared. He believes having deputy clerks giving information "would be like having a nondoctor operate on you." He also treats the deputy clerks as low status individuals by, for example, excluding them from conversations by motioning a third person to end a conversation when they come into the room. On several occasions he has told the deputy clerks not to give particular types of assistance, but to simply "take fees."

Although Judge Cain serves on a court that requires modification of the judge's role, he has maintained the same attitudes he brings to his other duties. Judge Cain is also concerned with maintaining the aloof behavior he considers

appropriate for a judge. He takes his job very seriously and, unlike Judge Ryan, never jokes with the clerks or the litigants. Judge Cain is very sensitive about status differences in the court, perhaps because within the legal profession in general and the court system in particular lower court judges have little status (Blumberg 1967). Judge Cain's frequent analogies between medical doctors and judges may be seen as an effort on his part to enhance his own status by comparison with a profession whose members not only have more status and skill but are considerably better paid. He still considers it the responsibility of the litigants, usually through attorneys, to present their cases clearly to the judge. He considers it his job to rule on what is presented in the court and nothing more. Like Judge Ryan, he will not continue a case in order for an inexperienced litigant to prepare himself better.

Judge Faraday is even less sympathetic toward unrepresented litigants and less aware of the special problems inherent in small claims court than Judge Cain. Several years older than the other two judges, he is a bald, stocky man. He has been a judge for ten years and before that, he was assistant city attorney. Prior to his job with the city, he was in private practice for thirteen years. He received both his bachelor's and law degrees from the University of Florida. Judge Faraday has a brother in town who is also a lawyer. During 1979, Judge Faraday heard far fewer small claims cases than the other two judges. One of the clerks reported that he had suffered a heart attack, although the rumor heard from members of the community was that his frequent absences were a result of a drinking problem.

Unlike Judge Ryan and Judge Cain, Judge Faraday does not believe unrepresented litigants are at a disadvantage in small claims court. He does think his job is easier when attorneys are present because "you don't have to

explain everything to them" as you do when individuals represent themselves. In cases which rest on one person's word against another's, he reported that he rules by "gut feeling." He continued, "The plaintiff has the burden of proof. If I have any question about the claim, I rule for the defendant." In general, he said he decides cases by "looking at the facts and applying the law." Like the other two judges, he believes litigants should "behave like adults and act reasonable." He also thinks, as does Judge Cain, that people are more satisfied if they work out their own problems instead of having the court make decisions for them: "It's the same with children. It's better if they work it out than if you take a stick to them," according to Judge Faraday. Like Judge Ryan, he believes in the importance of giving the litigants a "cooling off" period.

Judge Faraday describes small claims cases as "small matters" and contrasts them with regular civil cases: "Cases up to \$1,500 are governed by Rules of Summary Procedure, above that [they are governed] by regular civil procedure . . . that's a whole different world." Collection is also described by Judge Faraday "as a separate procedure under the law. . . . [and] I've taught most of the lawyers how to use it." This admission reflects the general preference Judge Faraday shows toward attorneys over unrepresented litigants in small claims court.

During the course of the study both Judge Faraday and Judge Ryan were up for reelection. Judge Ryan drew no opposition while Judge Faraday was opposed by a popular local attorney. This was only the second time since 1952 that an incumbent county judge had drawn opposition. Two years prior three local attorneys had run against Judge Cain and lost. Drawing opposition may reflect the attitudes of the local bar toward a particular judge. A candidate for a newly created circuit judge position reported in a private conversation with

the researcher that when attorneys are unhappy with a judge they will get together and convince someone to run against the incumbent. Judge Faraday lost the election by nearly a thousand votes. He was hurt in part by a statement he made, which was quoted in the local paper: "I'm enjoying it [serving on the court]. The work's not nearly as hard as practicing law." He further stated that after another term "I'll be 64 then. I'll be eligible to retire and I think I'll do it." No doubt members of the community resented paying Judge Faraday \$41,248 for a job he considered an easy way to spend his years until retirement.

Judge Faraday was replaced by Judge Russell, a 36-year-old graduate of Florida State University and Cumberland Law School in Birmingham, Alabama. He was small claims court judge in 1972-73 until he lost his job as a result of the statewide reorganization of the courts. Since 1973 he has been in private practice specializing in misdemeanors, traffic violations, and small claims in order to gain the knowledge and experience he considered necessary to run for county judge. During his campaign Judge Russell showed awareness of and expressed concern for many of the problems in small claims court. He thought it would be better to have one judge in charge of each of the major areas of county court (small claims, misdemeanors, traffic) instead of having all three judges serve on the three areas simultaneously. He also thought cases should be scheduled at specific times and that they should be set 30 instead of 60 days after filing. Judge Russell also said he would consider the institution of night court and that he would write at least a paragraph explaining his ruling in each case.

Although Judge Russell is concerned with the problems of unrepresented litigants, he also believes that people create some of their own problems by

confusing right or wrong or fairness with the law. As he said, "This is not a court of equity but of law and I'm bound to rule by the law. . . . I've told people that -- that they might be morally right but there's nothing I can do." A small claim court judge in a Illinois court expressed a similar view: "The court is not designed to perform 'higher justice,' such as that espoused by the ecclesiastical courts. That is not the function of this court" (Smith 1970:94). Judge Russell believes, however, that even if he cannot rule in someone's favor, "it helps to let them talk, to let them get it off their chests." People, according to Judge Russell, should not be so quick to bring their problems to court. They should try to resolve their differences before calling on the court to help them. Judge Russell illustrated this point with a recent case. The case was based on one person's word against another's and no evidence was presented. A woman was unhappy with a paint job on her car, but the business said they had done a good job and had a good reputation. The other judges would have probably ruled in the defendant's favor since the plaintiff had not proved her case. Instead Judge Russell told the woman to take the car back and talk to the owner. If she was still not satisfied he told her to subpoena experts and come back to court. In Judge Russell's mind "she'd gone to step 3 [filing in the court] without going to step 2 [negotiating with the other party]."

Judge Russell's attitude toward attorneys in small claims court also varies from that of the other judges. I had lent him a book on small claims court in which the authors recommended that attorneys be permitted in small claims court, but that they be prohibited from saying anything. Instead the litigants were to present the case in their own words and the judges were to question

them directly. Judge Russell brought up the point saying that he agreed with it. He continued with "more and more I think everyone should have lawyers or no one should. . . . The legislature could pass a law to prohibit lawyers."

Analysis of interviews with forty-two county judges in the thirteen-county Florida Office of the State Court Administrator study revealed that many of these judges share the concerns of some of the Leon County judges. Several judges expressed uneasiness in situations in which one side is represented and the other is not. In these instances, some judges reported that they acted as the attorney for the unrepresented party while others, because an attorney was present, assumed their traditional role as a neutral third party. One judge reported suggesting in cases in which one party was represented that the other party also obtain representation.

A majority of these judges thought that most litigants do not need attorneys to pursue small claims. One judge summarized this view: "There are isolated cases involving complex issues where an attorney would be needed, but in the majority of cases attorneys are not needed." Many of these judges, like the Leon County judges, qualified their "no" responses. They recognized that although attorney representation is not necessary in small claims court, it is frequently beneficial. Judges also acknowledged that their job is made easier by attorneys. As one judge said, "I cannot say across the board that we should have attorneys in small claims court. In cases where neither party is represented it really slows the process down." However, another judge stated, "From the judge's perspective, it is easier for him when attorneys represent parties, but in recognition of the purpose of small claims, this preference would be counterproductive. The idea of small claims is to allow lay people to settle problems without attorneys." Several judges did mention the need for some

procedure to make cases in which one party is represented and the other is not fairer for the unrepresented party. One judge suggested that basic points about summary procedure be explained through a pretrial order, while another suggested use of staff -- either paralegals or clerks -- to help litigants prepare for court.

Although most judges did not think attorneys were necessary to pursue a claim in small claims court, the majority believed attorneys play a useful role in the small claims court process. Judges viewed attorneys as fulfilling a positive function in the court insofar as they determine facts and issues, screen out cases in which there are no legal issues, seek stipulations and settlements, and, in general, speed up the process. Six of the judges interviewed thought attorneys were a hindrance to the process by forcing the judge to follow formal rules of evidence and trial procedure. Again, judges were particularly concerned about cases in which one party was without counsel: "They [attorneys] can assist the court as to an accurate determination of the facts, but the court should not allow the attorney to intimidate the party without counsel."

Over half of the judges interviewed supported the use of another type of third party (such as mediator, special master, referee, or arbitrator) at some point in the small claims process. Several judges suggested that the most appropriate place for diversion of cases to another forum would be during a pretrial or preliminary hearing. Like Judge Cain in Leon County, several of the judges interviewed are opposed to use of other types of third parties because they perceive these alternatives as an unnecessary step in the processing of disputes that will eventually be filed in small claims court.

Like the Leon County judges, the judges interviewed do not think the high rate of defaults in small claims court is necessarily a problem. They believe in most cases people default because there is really no dispute -- they simply cannot afford to pay. Judges did, however, think certain types of litigants and litigants bringing certain types of cases are at a clear disadvantage in small claims courts. Litigants cited as disadvantaged included non-English speakers and members of other minorities, those with little education, those ignorant of court proceedings, those without attorney representation, and defendants. Cases against experts, those requiring detailed records, and those governed by complex rules of law were viewed by judges as particularly difficult for the unrepresented litigant. The judges do not, however, think the court is being abused by business or corporate plaintiffs. The vast majority of judges think small claims court is the proper forum for anyone who has a small claim, regardless of whether the party is an individual, a business, or a collection agency.

Judges did think more detailed information on court procedures should be made available to members of the public. As found in Leon County, one area of law in which both the public and the judges lack expertise is consumer protection law. Many judges suggested judicial education programs be expanded to cover this area.

Small claims court judges bring different attitudes to the process. Some of the judges consider the court essentially the same as the other courts on which they serve while others recognize the special problems inherent in a court designed for use by a wide variety of litigants. All the judges in Leon County, however, were observed to assume a relatively passive role, ruling only on the facts and evidence presented to them. Of all the Leon County judges,

Judge Ryan assumes the most active role, a role with which he is not completely comfortable. All the judges also believe that certain kinds of cases and certain types of behavior are inappropriate in small claims court. Judge Ryan characterizes these as "arguments between unreasonable people" and Judge Cain as "arguments over principle." Even Judge Russell who is most concerned with equal access to the court for all citizens believes that people should try to resolve their own problems before bringing them to court and that when they do bring them they must remember that small claims is a court of law not of equity. All the judges dislike any expression of emotion in the court. Judge Russell and Judge Ryan are ambivalent about the use of attorneys in the court, particularly in cases where the other side is not represented. In contrast, Judge Faraday and Judge Cain, like many of the judges in the office of the State Court Administrator Study, are in favor of attorneys in the court, in part, because it makes the judges' job easier. Even Judge Russell and Judge Ryan favor attorneys in the court insofar as they expect certain behavior on the part of litigants--and this behavior is the behavior known and practiced primarily by lawyers.

The Clerks

The clerks have received even less attention in the small claims court literature than the judges. In fact they have received very little notice in the extensive general literature on courts and their operation. Although the clerks have little formal power, they are the disputants' initial contact with the court and as such play a crucial role in the court. They are also key figures within the courtroom community since judges and attorneys as well as litigants depend on them for scheduling and smooth operation of court functions (Gertz 1977). Berkson and Hays (1976) suggest some explanations for the absence of studies

on court clerks. First they suggest that researchers have failed to recognize the importance of clerks because the title "clerk" does not indicate high status. In a study of occupational prestige (Hodge, Siegel, and Rossi 1964) quoted by Berkson and Hays "clerks" ranked sixty-eighth on a list of ninety possibilities. Second, according to Berkson and Hays, political scientists have failed to see the political nature of the office but instead have viewed it as strictly an administrative position. To begin to fill this gap, Berkson and Hays undertook a study of court clerks in Florida. They sent a questionnaire containing demographic and attitudinal questions to each of the state's sixty-seven clerks.

In Florida the clerk of the court is elected and serves as both clerk of the circuit court and clerk of the county court. Berkson and Hays (1976) found almost total uniformity on socioeconomic background of court clerks. Nearly all clerks in Florida, including the Leon County clerk, are white, male Protestant Democrats over 50 years of age. Berkson and Hays also found that the clerks are very conservative and operate for the most part autonomously from the judges. Judges recognize and resent the power of the clerks, but in general allow the clerks to operate the court as they see fit. However, in at least one instance in Florida open conflict has erupted between a judge and a clerk. In this case (Carbon v. State ex rel. Staughter, 324 So. 2d 203 [Fla. App. 1957]), a county judge in Duval County issued an order directing the clerk to furnish him with the names of the deputy clerks assigned to him. The clerk refused to comply with the judge's order, and the judge issued another order for the clerk to show cause why he should not be held in contempt for refusal to comply with the first order. The clerk responded by filing a petition for a writ of prohibition with the circuit court alleging that the judge did not have the authority to hold him in contempt. The circuit court took the side of the clerk.

by issuing the writ and the judge appealed. The District Court of Appeal unanimously reversed the circuit court stating that "the Clerk is merely a ministerial officer of the Court. . . . He does not exercise any discretion. He has no authority to contest the validity of any act of the Court for which he acts as clerk which purports to have been done in the performance of the court's judicial function. . . . Any question the Clerk had concerning the order should have been directed to the Chief Judge for resolution" (Carbon v. State ex rel. Staughter, 324 So. 2d 203 [Fla. App. 1957]). The members of the Court of Appeal obviously thought that it was inappropriate for the judge and the clerk to bring their dispute to the public's attention in the first place. The members of the court concluded their opinion with:

Although unnecessary for this opinion and unsolicited by the parties, we feel compelled to make the following observation. Because our judicial system is under constant assault from many sources and for many reasons, some valid, some invalid; and because actions such as this one heap further criticisms upon our judicial system, however good the intention of the parties, we suggest that the parties here, as well as those finding themselves in similar situations, hereafter strive to work our internal disputes with this thought in mind -- will the action I take be beneficial to the efficient and economical administration of justice; will it help build a better judicial system. (1957:204)

In addition to his judicial function, the clerk also serves as county auditor, county finance officer, county recorder, and secretary/accountant for the county commission (Hays 1978). These functions take much of the clerk's time, and as a result the deputy clerks, who provide the clerical staff for the court, are frequently left on their own. In fact, in Leon County the clerk's office is located several miles from the office of the deputy clerks. The elected county clerks of the state are instructed by the Rules of Summary Procedure to "assist in the preparation of a statement of claim and other papers to be filed in the

action at the request of any litigant. The clerk shall not be required to prepare papers on constructive service, substituted service, proceedings supplementary to execution or discovery procedures" (Rule 7.050(c)).

In small claims court in Leon County, however, it is the deputy clerks instead of the clerk who interact regularly with members of the public, judges, and attorneys. There is virtually no literature on the role of deputy clerks in the court. The deputy clerks take people's claims and fees, keep the files up-to-date, and set the docket. Also, two deputy clerks are required to be present during pretrial hearings, and one deputy clerk is required to be present during hearings. During pretrials deputy clerks are very busy marking the disposition of each case, but during hearings the deputy clerk may sit for hours only to write a few words on the docket sheet upon completion of the case. The deputy clerks are under the formal authority of the clerk of the court who recruits, selects, trains, and evaluates them without any consistent guidelines from court to court. The only requirements for the job are the ability to type and a high school diploma. According to Feeley (1979), court clerks obtain their staff in a traditional nonrational way, recruiting employees on the bases of such factors as friendship and family ties rather than technical competence or experience. The deputy clerk's salary is low, with the average initial salary in 1978 of \$5,200 (Hays 1978). In contrast the clerk's salary is often equivalent to that of circuit judges and is higher than that of county commissioners, supervisors of elections, tax assessors, and tax collectors (Berkson and Hays 1977).

Over a period of a year and a half, I spent approximately 200 hours in the office of the deputy clerks sampling the records and talking informally with the office staff. During this time I became aware of the attitudes and behavior of the people in the office. I became interested in their role in the court not only

because they are the public's first contact with the court, but because they seemed to be confused about the extent to which they should provide information to the public. There also seemed to be a guardedness and secrecy on the part of the deputy clerks and an unusual amount of job dissatisfaction. When I began the project, there were six deputy clerks: four white females, one black female, and one white male. The white male was the supervisor and had only been there for a year while two of the white females had been employed by the court for four or five years. The supervisor, neatly dressed in a coat and a tie and in his 40s, admitted he did not know anything about the courts before he "went to work for Paul [the court clerk]." Another deputy clerk had been employed for about six months. By the end of the year and a half both the long time employees were gone and had been replaced by two other white females. During the study period, a black male had also been employed briefly. Toward the end of this period the clerk who had only been employed for six months when the study began was also gone. She was replaced by another white female. All of the deputy clerks employed during this period as well as the clerk of the court had been long-term residents of the local area.

Deputy clerks repeatedly refer to themselves disparagingly as record keepers. They stress that they are not lawyers and have been repeatedly instructed by the clerk and the judges not to give what may be construed as legal advice. For example, in response to a question from a litigant on garnishment, one deputy clerk said: "The clerk and the judges have emphatically told us not to give legal advice. If we give advice and we're wrong, we're in trouble. We are really just record keepers. We can't answer on points of law." The deputy clerk suggested that the person see an attorney.

The deputy clerks further view themselves as in an uncomfortable position between the judges and the public. As one deputy clerk succinctly summarized this dilemma, "The judges want us to be nice to people because they are politicians, but they don't want us to be so helpful we are accused of practicing law." The deputy clerks have to confront members of the public directly and tell them they cannot answer their questions. On occasion, they are also expected to perform duties they have not been trained to do. For example, one of the judges had told a local attorney to have the clerks fill out a form for contempt. The clerks do not normally do this but in an effort to please the attorney and the judge, the clerk used a contempt form completed by another attorney as a model. Apparently the clerk completed the form incorrectly and the attorney called the clerk and angrily said, "This will not do" and threatened to see the judge. The clerk was polite as always and said he was sorry for the problem but that he was not a lawyer. Clerks further view the judges as not wanting to have any of their prerogatives taken away and as doing some work the deputy clerks believe they could do. As one deputy clerk said, "half the things I send to the judges are routine and I could handle, but they [the judges] are lawyers and don't want their work taken away."

Deputy clerks following the judges insistence that they are "merely record keepers" frequently devalue the importance of their own position. One deputy clerk, who was uncharacteristically enthusiastic about the job, was treated in a derogatory way by other deputy clerks and by attorneys. For example, one afternoon she was chatting with a lawyer who files numerous cases in small claims court, and she said she was interested in seeing how a particular case would turn out. He snapped back, "Why? What's it to you?" She replied, "Well, I'm a deputy clerk." After she left, another deputy clerk said, "I'd be

embarrassed if someone said that to me." In her absence, the other clerks laughed at her because she had told someone else, "I work with judges and lawyers." The other deputy clerks also disliked her because she challenged the status quo by complaining that there was too little work to do. One of the long-time employees disagreed, saying that she had plenty to do; in my observation though, she seemed to spend most of her time taking breaks. Ultimately this deputy clerk, although enthusiastic and a hard worker, jeopardized her position, because she failed to show the appropriate deference to the judges. She referred to Monday's pretrials as "my court" and was heard complaining to the other clerks that "you really have to go through them [the pretrial cases] good when you get back to the office because the judges don't pay attention." She reported finding one case in which a judgment had been issued before the claim had even been served. In contrast to this clerk, the other clerks generally respond passively to mistakes made by judges or by attorneys. Their attitude is that it is up to the other side to find the mistake and request that it be corrected. The enthusiastic clerk would also type claims for people -- sometimes in inflated pseudo legalese -- although the judges had instructed the deputy clerks to accept whatever claims people bring and to let them write the claims any way they want. One day I noticed that the clerk was not there and someone else was at her desk. I asked another clerk what had happened to her and she replied tersely, "she's not with us anymore."

As might be expected in a setting where there are substantial differences in power among participants, resentment is frequently expressed by the lower status individuals toward the higher status individuals. The deputy clerks express resentment toward the judges and, to a lesser degree, the clerk. The judges are viewed as having total discretion and of at times acting in a

capricious way. One deputy clerk recounted occasions when judges threatened people with contempt citations for such things as not swallowing gum and not sitting on a particular bench when told. A deputy clerk was also reportedly threatened with contempt for telling a judge "that's not the way we do things." In another instance the defendant was represented by an attorney and the plaintiff, a businessman, was not. At the beginning of the hearing the judge asked those who were going to give testimony to raise their hands to be sworn in. The plaintiff failed to raise his hand, apparently because he had misunderstood the judge, and was not permitted to give testimony. The judge then proceeded to dismiss the case. The deputy clerks describe the judges as "gods," as "not having any boss," and as having almost tyrannical control over the deputy clerks.

The clerks believe that how litigants look and act is of crucial importance to judges in cases which entail one person's word against another's. "Now in cases like that, that's when how you look and act is important. I don't mean you have to go to court in your Sunday go to meeting clothes, but the way some people look it doesn't show any respect for the court. . . and the judge won't like it if you act smart alecky." The clerk further reported that one judge would bend over backwards to help people, "especially the ladies," but this was not confirmed by observations. Nor was it confirmed that the amount of help a person received was conditional on their appearance.

In their discussions of the various judges, the deputy clerks express irritation at one judge in particular. He is described as "a law and order man who gives sentences twice as long as the other judges," and it is said, "you don't push him at all." A number of articles in the local paper about the severity of this judge's sentences confirmed this view. The deputy clerks believe he "acts

tough" because of his ambition to be a circuit judge. As one deputy clerk said, "he wants to be circuit judge so bad he can taste it." Another judge is described by the deputy clerks as "having a good sense of humor" and "as bending over backwards to help people." It is also said that "he does more than the others and he's getting tired of it." This view was confirmed by the sample of cases drawn from 1979. In this sample, the judge was found to have had many more cases than the other two judges although the number of cases are supposed to be distributed equally among the judges. The deputy clerks clearly prefer this judge to the first judge described. In actuality, however, the first judge is the one litigants interviewed in the course of this research consider to be most fair and speak of most highly. The deputy clerks' views of these two judges is based more on how they treat deputy clerks than on how they treat litigants. The first judge is impatient toward the clerks and is strongly opposed to permitting the clerks to do anymore than take claims and accept fees, while the second judge jokes with the deputy clerks and discusses the law with them.

The deputy clerks' attitude toward the third judge was more neutral than their attitudes toward the first two. Because he had apparently made some mistakes in a couple of cases and because he was the only judge to have a case reversed, one deputy clerk said, "He's a nice old guy but I wouldn't want him to hear my case." The deputy clerks were somewhat wary of the new judge, who took office at the end of the research period. They were especially suspicious of some of his proposed reforms such as night court, which would mean more work for the clerks: "It will be impossible for him to do anything he proposes because the other two judges won't go along with him," according to one deputy clerk.

Judges also create problems for the deputy clerks by handling cases in slightly different ways. Judges do not seem to confer and set policy, rather each has his own ideas about the best way to handle certain cases. They run their courtrooms independently, and behave more like minor feudal overlords than members of modern organizations where rules are supposedly more important than personalities. For example, one judge wants all his county civil cases (those over \$1,500) set for pretrial hearings with small claims, while another judge wants them set for separate hearings. As a result, the deputy clerks do not know whether to schedule county civil cases on the pretrial docket.

The clerk of the court is referred to by the deputy clerks as "the boss." Nevertheless in my 200 hours of observation, I never saw the clerk in the office of the deputy clerks. His management technique appears to be to tell the supervising deputy clerk to give instructions to the other deputy clerks, a practice which causes resentment among other deputy clerks. Instructions include such things as not eating at your desk, not smoking, and not making personal calls. Training of the deputy clerks is supposed to be the responsibility of the clerk, but formal training for deputy clerks appears to be nonexistent. The supervisor of the deputy clerks was heard to repeatedly ask one of the two longtime employees how to do things. Any training that takes place occurs informally on the job. One relatively new employee reported that the supervisor wanted her to learn all the office operations. However, she is to learn from the people who do each operation since the supervisor does not know the details of each task.

The clerk of the court, like the judges, is seen as a politician and is described as not knowing very much about the day-to-day workings of small

claims court. Perhaps one of the reasons the clerk does not take a more active role in small claims court is that in the hierarchy of courts, small claims court is not seen as very important. As one deputy clerk said, "most lawyers prefer circuit court. County court is small-time; it's for the little man." Furthermore, within the county court, criminal court is seen as more interesting than small claims court.

The deputy clerks view plaintiffs and defendants in different ways. The plaintiffs usually come in person to file suit, although some attorneys file by mail. Defendants, in contrast, usually have no contact with the court until they appear at pretrial hearings. Approximately 30 percent of the defendants do not appear at pretrial and 15 percent cannot be located in order to serve the summons. Thus, approximately 45 percent of the defendants have no contact whatsoever with the court.

Plaintiffs are described by the deputy clerks as "customers" and are assumed to have valid claims. They are, often, although perhaps unwittingly, encouraged in their suits by deputy clerks. For example, a deputy clerk told a woman whose tenant was planning to take the dead bolt lock from the door that she could sue for damage to the door and keep the tenant's deposit if she chose to do so. Another plaintiff alleged that she was told by a deputy clerk when she filed her suit that she was entitled to "either the land or the car" of the defendant. The plaintiff is not "entitled" to anything until a judgment against the defendant has been issued by the court. In another instance the deputy clerk took the side of a plaintiff during a phone conversation. The deputy clerk said to the landlord that you could not evict a person if you had accepted money from the person and that you would have to file a separate suit for back rent, but "what you might do is go out there and tell them you are going to file a suit

against them, talk about the sheriff, the court, the judges... you wouldn't be lying."

In contrast to plaintiffs, defendants are described as "people who don't pay their bills," as "not from a good element of society," and as "transient." They are also referred to as "people with no character." Deputy clerks are cynical about statements of insolvency, which allow people to receive legal aid. In reference to these statements, one deputy clerk said: "that doesn't mean they don't have any money. People can lie. They don't check them." Defendants in small claims court seem to be equated with defendants in criminal court by the deputy clerks as well as by the judges. During a conversation on shoplifters, a deputy clerk said: "What's the difference between them and the people we get here. They get merchandise and don't pay for it. It's the same as stealing. You can't go to jail for not paying your bills..." Another deputy clerk agreed: "It's the same thing; it's just the way the law looks at it."

The deputy clerks, in spite of their view of themselves as "merely record keepers," have developed ways of exercising power in the court. For example, the deputy clerks grant preferential treatment to certain types of individuals. This favoritism is expressed by making phone calls when there is a problem with a case, for example when there has been no service of process, instead of making a person wait for pretrial, only to have the case continued. They will also make free photocopies instead of charging the required \$1.00 per page. Deputy clerks will also come quickly to the counter and flirt and joke with their favorites while they offer no favors nor give any advice to people they do not know or do not like. It was not unusual for people to wait at the counter for several minutes before a clerk comes to assist them although the clerks did not

appear to be very busy. Negative attitudes toward members of the public such as those displayed by the deputy clerks are apparently common among employees of government agencies. Serber in a study of the complaints division of the California Department of Insurance quotes an insurance examiner's attitude toward members of the public in contrast to members of the industry:

It is much worse to deal with someone in the public because you know that you are very limited in what kinds of answers you can get for them. They expect more and often get impatient. With the industry, it's different: they are usually friendly and polite, at least to our faces; we always know where we stand and how far we can go. It's less stressful. (1971, quoted in Nader 1972:296)

Likewise, the deputy clerks are very uncertain about dealing with members of the public who expect them to be able to answer their questions.

Perhaps the most important exercise of discretion by the deputy clerks is setting the docket so that "favorite customers" are first. The setting of the pretrial docket not only is an example of the exercise of power by the clerks, but also expresses the way they view the different people who use the court. When I asked one of the deputy clerks how the pretrial docket was set, the deputy clerk said with a laugh, "oh, we set it anyway we want. We put the attorneys we like first, then the banks, then the individuals. We like TR and M and N a lot, so they are always at the top. M and N give us little presents and invite us to their parties." I asked about another lawyer, MR, who frequently files cases in the court. "We like him, too, but he has so many cases. We do put him before DR and SW who we don't know. We put individual [unrepresented] cases at the end... The attorneys have to get back to their offices, the attorneys come to the courthouse at 9 o'clock and look at the docket. The ones who aren't at the top joke with us and ask why they aren't at the top, and we tell them the ones at the top have paid their dues." Such activity by the clerks

is apparently not unusual. Eisenstein and Jacob report in a study of the Chicago felony court that attorneys "facilitated the handling of their cases by passing small sums of money to clerks. . . . Insertion of five to ten dollars into the file when it was handed to a clerk improved the chances of an early call of the case." (1977:120). Carlin also found that attorneys in solo practice in Chicago were well aware of the importance of establishing obligations between minor officials and themselves by offering of gifts: "The big important thing, when you go around and see--at Christmastime it's traditional in Chicago to pass out \$25 in envelopes to the clerks of court, the clerks in other offices, the bailiffs. If you don't, you're out of it" (1962:9).

The deputy clerks do not offer any help beyond the bare minimum to people they do not like. For example, a young white man came into the office and asked for a copy of a complaint form for a case in which he was one of the litigants. One deputy clerk who apparently knew him shouted from the back of the room that "the hearing was yesterday." He asked if the other party had appeared. She would not tell him and told him a copy of the complaint would cost \$1.00. When he left, she said to another deputy clerk that she was not going to give him any information, even though, as she added, she would have had to show him the file if he had asked for it. The other deputy clerk added that he would not have known where to find the desired information (indication of whether parties were present) even if she had given him the file. In felony courts observed in Connecticut clerks even more actively sabotaged cases of certain attorneys. One attorney when asked if he got along with the clerks

reported, "I try. They have all the power around here. I have to eat a lot of s---. Files are mislaid. I don't get to look at the warrant. They can break you. They have arbitrary power, it should be discouraged since it's not going to disappear" (Gertz 1977:34).

The power exercised by deputy clerks is, however, tenuous or in Adams' terms (1977) dependent. In other words, the power the deputy clerks exercise is given to them by the judges and the clerk and may at any time be taken away. For example, toward the end of the study an individual complained to a judge that it was not fair to set the pretrial docket so that attorneys go first and unrepresented individuals have to wait. As a result, the deputy clerks were instructed by the judge to set the cases for the docket in the order in which they are filed. The docket, however, still does not appear to be set in the order cases are filed, and the deputy clerks may still be setting the docket with considerable discretion.

Clerks in charge of small claims courts were interviewed in thirteen counties as part of the Office of State Court Administrator study. These clerks expressed many of the same problems as the clerks in Leon County. Many, however, did appear to be allowed to give more assistance to litigants than were the clerks in Leon County.

Over half the clerks interviewed felt their greatest problems stemmed from lack of knowledge, both of law and procedure, on the part of litigants. One clerk described the problem as two-fold: (1) "People needing legal advice or having specific questions which I'm not allowed to answer;" and (2) "the fact that the clerk is looked to by the parties to be their legal counsel." Clerks specifically mentioned that litigants are not aware of fees required or of the necessity of having the proper address of the defendant. People were also

reported to be unaware of the meaning of the court judgment -- thinking it meant they would receive their money immediately -- and to be unaware of proper collection procedures. In one court, the clerk stated that they did not have any problems with litigants because they used an information sheet.

The clerks interviewed, like the clerks in Leon County, feel uncomfortable about assisting unrepresented litigants. They were particularly concerned about problems faced by unrepresented litigants when they try to collect judgments. Again many individual litigants, according to one clerk, expect help from the clerks who are restricted in the amount of advice they can give. Clerks were asked what assistance, if any, they gave litigants seeking payment on their claims. Their answers reflected a lot of variation in assistance provided from court to court. One clerk reported not giving any advice at all. Another suggested that people with questions regarding collection contact an attorney or go to a law library. Several clerks handed out written information on collection to the litigants while others personally explained collection procedures.

Attorneys

Historically, the use of attorneys has been discouraged in small claims courts. Several states (California, Colorado, Idaho, Kansas, Michigan, Minnesota, Nebraska, Oregon, and Washington) have gone as far as to prohibit attorneys from appearing in small claims courts.

The early literature suggests few lawyers filed cases in small claims court during the early decades of this century. In contrast, the previous chapter showed that a significant number of plaintiffs (36 percent) and some defendants (7 percent) are represented by attorneys in Leon County small claims court. Attorneys were not formally interviewed as part of this study. They were

observed in the court and spoken with informally. In order to supplement this information, questionnaires sent to attorneys in thirteen other small claims courts as part of the Office of the State Court Administrator study were analyzed. In addition, the relationship of one attorney with the Leon County court is detailed.

About a dozen local attorneys make regular appearances in small claims court. They all know the judges as well as each other and can be observed standing outside the courtroom chatting before the Monday morning pretrials. All the regular attorneys are white males. Many are in solo practice. Carlin studied attorneys in solo practice in Chicago and found that they handle the least desirable legal work--collection, evictions, rent cases, personal injury, criminal, and divorce cases (1962). In fact several of the regular attorneys in Leon County small claims court are known to the judges and to other attorneys as "collection attorneys" because they specialize in the collection of debts. For these attorneys, small claims court is only one step in a long and complicated process. In most cases, the attorneys represent plaintiffs and have never even met the defendants before filing suit. After receiving a court judgment, the attorneys continue the process of collection by first sending interrogatories to the defendants to discover their assets. The attorneys proceed based on the defendant's responses. In some cases, they garnish wages or bank accounts; in others, they get a writ of execution from the sheriff to take and sell the defendant's property. One collection attorney described his office in terms reminiscent of a factory: "You should come out and see my shop. We do a lot of small claims work.... We have the organization geared up to collect [judgments]." Debt collection is in large measure a matter of bookkeeping, seldom requiring more than filling out standard forms or making routine

appearances in court. Other attorneys consider small claims cases cut and dry and uninteresting. They are also seen as "nickel and dime" work and as one attorney in town said, "Sure, we could help people with small claims, but it will cost them \$150 per hour." As a result of this attitude, members of prominent law firms are rarely seen in small claims court. They appear only occasionally either as representatives of large companies or as personal favors for friends.

Small claims court does appear to attract marginal members of the legal profession. Bill Bales is an extreme example. The first time Bill Bales came to my attention was when I was sampling the case files from 1979. I came across a case in which a bank was suing an individual, Jim Hammer, for nonpayment of a loan. Hammer was represented by Bill Bales and in the file was an extremely sloppily typed and ungrammatical letter from Bales on the cheapest paper available. His address, a post office box, was typed in the right hand corner. About six months later, Bales began to file large numbers of cases (20-30 appeared on the pretrial docket each week) for very small amounts of money, some as small as \$5. All of these cases were for bad checks written to local businesses. In cooperation with Jim Hammer, who heads a collection agency, Bales had gone around town collecting these checks from local merchants. Merchants can have the State Attorney's Office file criminal charges against people for writing bad checks, but only if they have requested and recorded identification information when they accept the check. Without this information, merchants had no hope of recovering their losses until Bales and Hammer came along.

During the pretrials, it became obvious that Bales hoped to collect much more than the amount of the bad check. He not only requested attorney's fees, but he also requested punitive damages for ten times the amount of the check.

Nearly all these cases were won by Bales by default. Judge Ryan, the presiding judge, refused to rule on either the punitive damages or the attorney's fees, telling Bales he would have to prove punitive damages in each case. He added, "And I'm not going to tell you how to do it." In one instance, the defendant, an overweight white woman, was present. She told the judge she owed the money and was going to pay it, including the \$250 worth of punitive damages for the \$25 check. Judge Ryan said, "You're not going to protest; well, I am." He instructed her at that time to pay for the check, but not to pay for the punitive damages.

The other two judges also refused to grant punitive damages, although Judge Faraday did, according to a clerk, grant them in one case. After several months of avoiding the issue, Judge Cain wrote an opinion refusing to grant Bales punitive damages. His main argument was that checks are contracts and that punitive damages may not be collected on a contract.

Shortly after Judge Cain issued his order, one of these cases, which the defendant had contested, was scheduled for a hearing before Judge Ryan. Bill Bales failed to appear. The defendant was noticeably disturbed and told the judge, "they [Bales and Hammer] plan to be paid no matter what." Judge Ryan told him not to pay anymore than \$23, the amount of the check. After the defendant left, I asked the judge what he was going to do about all the other punitive damage cases filed by Bales. He was silent for a moment and then replied, "I don't know how to answer that." He turned to the deputy clerk and asked her to get all of Bales's cases together for him. She said she could not do that without going through all the cases because the cases are only filed in the card index by the plaintiff's name. He replied, "We're going to have to straighten out the filing system over there. I don't want you to go through

every file. It will be up to Bill Bales to bring them to my attention. If not, they will be dismissed once a year when all cases are dismissed."

The business owners who had given the checks to Bill Bales apparently knew nothing about the punitive damages, although if collected it is the business owner and not the attorney who is entitled to them. One of the judges reported that he had heard through the grapevine that Bill Bales was pocketing the punitive damages he managed to collect by scaring people before he filed suits against them. One of the deputy clerks also told me about a friend of hers who owns a local business. He had given a bunch of checks to Bill Bales. He did not know anything about the punitive damages, and when he found out, he told Bales he wanted his checks back. Bales told him it would cost him \$100. At this point the business owner told him he was going to the State Attorney if Bales refused to return the checks. The clerk reported that the judges would be glad if someone called the State Attorney about Bales. She continued that no one, even the attorneys who went to school with him, liked him.

Over the next few months, judges became increasingly irritated with Bales and refused to grant him the favors and courtesies they normally grant attorneys. For example, the judges will frequently ask attorneys if they want attorneys fees even if these fees are not specified on the claim, but in Bales's case the judges refused to grant fees unless Bales specifically asked for them. During this time, one of the clerks reported that Bales had to "go before the Bar . . . but they didn't do anything. They just slapped his hand so Ryan gave up. He said he was going to let him do anything he wanted."

Several months later, however, the clerk reported, "you remember Bill Bales. They finally got rid of him." The clerk continued describing several encounters between Bales and the judges. During one pretrial before Judge

Ryan, the judge was talking to the defendant and Bales muttered something under his breath. Ryan became angry and, according to the clerk, had him hauled out of the court by the bailiff in front of all the other attorneys. Ryan told him he had to submit to a psychiatric examination and to appear before him with results within 60 days. At that time, the judge said he would decide whether Bales should be prohibited from practicing in the Leon County court. The clerk said, "Ryan can't really do that and he knows it. He can only bar him from appearing before him." Sixty days later, Bales appeared and Ryan rescinded his order, "but he'd scared him," according to the clerk. The clerk continued, "You've got to feel sorry for someone like that. He doesn't behave right around anyone."

The clerk described another case, this time before Judge Russell. A man had satisfied the judgment issued against him, but Bales had not filed a satisfaction of judgment with the court. Bales proceeded to send him interrogatories and to have him arrested for contempt. When the sheriff came to arrest him, the man told him he had already paid and the sheriff told him he had better see a lawyer. The man went to a well-known criminal lawyer and a hearing was held before Judge Russell. Bales failed to show up because as the clerk said, "he had no defense." Russell ordered Bales to pay the man \$800 in attorney's fees and to refund the money and any other costs "he'd managed to beat out of him." The judges finally put him out of business. According to the clerk, Bales got a job with the state, with the Bureau of Business Regulation.

Responses to the Office of the State Court Administrator questionnaire were analyzed to gain a broader perspective on attorneys who represent litigants in small claims court. Small claims court cases were found to represent only a small percentage of the case load of most responding

attorneys. For over 80 percent of these attorneys, small claims cases account for less than 25 percent of their caseloads. The majority of cases (77.2 percent) brought to court by responding attorneys are for the collection of debts. Only a small percentage (3.4) are consumer cases. An additional 6.8 percent are landlord/tenant cases.

Attorneys used a number of criteria for accepting a case. Many (68.8 percent) accepted cases from former clients. Others accepted cases based on type of client (e.g., business or individual) or type of claim (45.7 and 43.2 percent respectively). The amount of the claim was a factor for 41.5 percent of the responding attorneys. Whether the party was the plaintiff or a defendant was only important to 18.4 percent of the respondents.

Responding attorneys used a variety of fee arrangements in small claims cases. Approximately one-fourth charged an hourly rate. Another one-fourth took cases on contingency, while one-fifth varied their fees according to type of case. Only 2.5 percent of responding attorneys were on retainer.

Many of these attorneys (over 90 percent) reported that they frequently advised clients to handle their own cases. Several thought judges were more sympathetic to unrepresented litigants. As one attorney wrote, "a lay client is often able to gain an equitable solution a lawyer wouldn't be able to get. Judges are more sympathetic to unrepresented litigants." Attorneys also cited the simplified procedure in small claims court and the fact that most cases are not contested as reasons for advising clients to handle their own claims. Most attorneys (over 80 percent) did, however, offer advice to unrepresented litigants. For example, they often advised a litigant on whether the claim or defense was valid and on how to handle the case alone. A few attorneys participated in settlement negotiations and assisted in trial preparation.

In general, most attorneys (61.6 percent) thought litigants did not need attorneys in small claims court for the reasons cited above. Many attorneys, however, thought attorney representation was necessary in certain cases. Many thought businesses needed attorneys more than private individuals. Others thought nonresidents needed attorneys more than residents or that plaintiffs required attorneys more than defendants. Personal qualities such as intelligence and education were given by some attorneys as determining whether a person needed an attorney. Many attorneys thought the amount of the claim was a factor, with \$500 frequently cited as the amount over which an attorney was warranted. Others believed an attorney was needed if the case went to trial. The largest number of attorneys (28) believed an attorney was necessary if the other side was represented.

Approximately 40 percent of responding attorneys thought that litigants did in fact need attorneys in small claims court. The consensus of this group was that laymen cannot represent themselves adequately because they are unfamiliar with the legal process. Many of these attorneys also believe laymen delay the small claims process. As one attorney complained, "the judge spends a great deal of time explaining the process and telling the litigants it's not their turn to talk." These attorneys preferred cases in which both sides were represented because "an attorney understands what's going on; the process is more efficient, orderly and insures the rights of litigants, [and] other lawyers recognize and are concerned with the rules. It is also easier to settle a small claims case with an opposing attorney since generally the amount in controversy does not justify the cost of the two attorneys without a good faith effort towards settlement." A few attorneys preferred to face unrepresented litigants because "it is easier to prevail due to their lack of knowledge."

Many attorneys (59.7 percent) reported conducting cases against unrepresented litigants differently than they conducted cases against represented parties. They also described the trial proceedings as conducted differently according to whether both parties were represented. For example, 23.2 percent of responding attorneys described trial proceedings as "formal" when both parties were represented; whereas only 3.0 percent described the proceedings as "formal" when one party was represented. Over 70 percent of the attorneys also believed the judge's role in small claims court is different from and more active than his role in regular civil court. The majority of attorneys, however, did not perceive their role as different from their role in regular civil court.

On the questionnaire, attorneys were given the opportunity to comment in general on the court and to make suggestions for change. Sixty-seven attorneys made comments on the small claims court judges. Of these, eight comments were positive and fifty-nine were negative. The largest number of negative comments entailed assertions that judges give too much help to lay litigants and that judges should "follow the law and the rules and stop the equity approach." One attorney summarized this position: "Judges are too active. I prefer normal adversary procedures with the judge fulfilling his time-honored and proper role as an impartial arbiter of the dispute." Several attorneys perceived judges in small claims court as inappropriately acting like an arbitrator, mediator, or referee instead of like a judge. Likewise, a local attorney interviewed during the course of this research strongly believes, contrary to the Rules of Summary Procedure, that judges should not assist unrepresented litigants because such assistance "is contrary to the judge's proper role as an impartial third party." The attorney, however, does not think the judge should explain his role to

litigants for three reasons: "The court isn't the place; there isn't time; and they won't understand."

Litigants' Attitudes Toward Legal Participants

Litigants in the forty-two extended case studies were asked their opinions concerning the judges, clerks, and attorneys they encountered during the course of their case. Litigants' opinions of the small claims court judges varied widely. In general their opinions depended not so much on any specific action on the part of the judge but on whether they had won or lost the case. For example, Margaret Lewis, whose case against her sister-in-law for nonpayment of nursing services was described in detail in Chapter 4, said, "the judge was unjust. He was not the type to handle this case. He got paid for his work, didn't he? So why didn't I get paid for mine?" I asked her what kind of judge would have been better. She replied, "one who would have given me my money." A woman who won her case said, "I don't have much faith in our legal system. I thought we were going to lose. The others thought we would have to win because we were right. . . . The judge asked some good questions. He gave us plenty of time. I thought the judge did a fine job, but maybe I think that way because we won." Even some litigants who won were not completely satisfied with their court experience. Ben Slate, whose case with Harry Norris was also described in Chapter 4, thought the judge was fair and allowed him to freely present his side of the case. He still believed, however, that he and Mr. Norris were not communicating and that Mr. Norris still believed that Mr. Slate was trying to cheat him. "What we needed was a mediator to help us communicate. It could have been anyone. It didn't have to be a judge."

Several litigants believed that although the judges listened to their sides of the case and appeared to be fair, they were not able to render a fair decision

because they were not experts in a particular area. For example, Bob Hodge brought suit against Ken Searcy for \$500, the amount he had paid Searcy to rebuild his car's engine. Several weeks later the engine blew, and Mr. Hodge had the car towed to Mr. Searcy's shop. Mr. Searcy refused to pay for the damage stating that Mr. Hodge must have run over a stick. Mr. Hodge took the engine to a mechanic and had the mechanic sign a statement concerning the damage. When Mr. Hodge attempted to present this statement as evidence during the trial, Mr. Searcy's lawyer objected that such evidence was hearsay and as a result the judge refused to accept it. Later in an interview Mr. Hodge revealed the contents of the mechanic's statement. The mechanic stated that the engine's push rods had been tightened too tight rubbing a hole in the push rod casing. As a result, the oil had leaked out, causing the engine to blow. At the trial, Mr. Searcy contended that the damage was caused by a stick. After the trial was over and the participants left, the judge told the observer he was going to have to rule in the defendant's favor because the plaintiff had not proved anything. The judge also indicated that he believed it was possible for a stick to damage an engine. The plaintiff was very upset by the judge's decision: "We were 100 percent sure we knew what happened and why. . . . The judge didn't know anything about cars. We should have had somebody who did." In another case involving a commercial refrigerator the defendant reported that she felt a need to educate the judge about their equipment. "He's not a refrigerator man. That's very obvious. He's going to come out here [to her business] and I'm going to show him around."

Many litigants were critical not of the judge but of the system. As Mr. Hodge said in response to the question "was the judge helpful?" "Was not actually him [who wasn't helpful], was not knowing the law that was not

helpful." Mr. Hodge, like other litigants, had also been led astray by one of the deputy clerks. When he filed the case, he asked the clerk what would happen in court. He reported that she said the judge would read the complaint and ask him and Mr. Searcy what their opinions were and then he would send them somewhere to talk. After that, she said, the judge would set for trial and then he and Mr. Searcy would tell their sides to the judge and he would make a total ruling. "She didn't say nothing about an attorney. I took it for granted there would be no attorney. She said most cases were settled without going to trial, but if it goes to trial you can bring your papers then." Another litigant also believed his lack of information hurt him in court. As he said, "you don't know what the judge is looking for, you don't know about expert witnesses, when the judge gives you a chance [to talk] you don't know what to say." He continued, "I could have brought a document from the insurance company stating the [car] top was 75 percent good, but they had their experts. I would have won if I'd had an attorney. . . . I should of subpoenaed my witness. . . . [During the trial] I felt like telling them to stop. I could feel my heart pounding in my chest, but I decided to go through with it because I knew I was right. The judge had to deal with the evidence, but it's a problem because you don't know what evidence you should have and you don't know what to say to people because you are not a lawyer. . . . It's just a nickel and dime thing and I was a rookie, but if I go again to small claims court, I'll take a lawyer." The plaintiff in another case (Walters v. Charles) said, "there's something wrong with the law. He [the defendant] was just a jerk. I think the judge felt that way too. It's so funny. The judge seemed like a fine person. I read an article in the paper about how he is handling young people in traffic court and then he lets this guy go."

The small claims court judges are perceived by some litigants to be biased, although perhaps unconsciously, in favor of attorneys. One litigant described the natural communication that occurs between attorneys and judges because they are members of the same profession and share a language and a way of looking at things: "Bob [the attorney] didn't even have to say anything to the judge. He just had to jesture and the judge understood." In another case when the other side retained a lawyer, the plaintiff thought he had lost his chance of receiving a fair trial. The attorney had filed a counter claim against him stating that the claim "was not to exceed \$2500" [the jurisdictional limit of county court]. When the plaintiff, Mr. McKay received the counter claim in the mail, he reported, "It put the fear of the Lord in me. I thought we were going to talk man to man in front of the judge, to explain what happened then they bring a lawyer in." Mr. McKay, like many other litigants, felt like an outsider during the pretrial because the other side's lawyer "starts talking back and forth in legalese with the judge." Mr. McKay continued that he felt the presence of an attorney meant any personal relationship he might have had with the judge "went out the window. The institution works in favor of the lawyer. I felt the judge was an enemy not a friend."

Analysis of questionnaires sent to litigants as part of the Office of the State Court Administrator study also revealed feelings on the part of litigants that the court discriminates against unrepresented parties. One business plaintiff who won complained that "failure to secure legal counsel puts your case last on the docket. Cases with attorneys are held first." Other litigants reported more subtle forms of discrimination, similar to those reported by litigants in Leon County, "the judge seemed to lean toward the plaintiff who had a lawyer." "Their lawyers seemed to have the judge's ear." Many litigants

found it difficult to obtain information without a lawyer. As one litigant said, "I found it impossible to go to court without hiring an attorney. No one was available in the court system to explain the filing procedure."

Several Leon County litigants were satisfied with the way the judge conducted the hearing and treated them, but had trouble understanding the judge's decision. Litigants in cases in which the judge did not give or explain his decision after the hearing but instead had the clerk's office mail his decision were particularly confused. During an interview Mr. Massadourian, whose case was described in Chapter 4, repeatedly said, "I just don't understand why the judge ruled that way." But when asked how he thought the court should be changed he said, "[there is] no problem with the way the court is. It was excellent. The procedure was very professional. The judge was a good listener. He seemed like he cared. Everything was perfect but the decision." Another litigant who did not understand how the judge could have ruled against him was also very confused by the wording of the judge's decision: "... the plaintiff should take nothing from this cause and go forth without day." The plaintiff said, "who could understand that. Even the people at legal services had trouble with it."

A number of litigants reported having difficulty finding where to file a small claim. Several went to the downtown courthouse only to be told they had to file at another government building several miles away. Two litigants then went to the filing office instead of the downtown courthouse on the day of the trial. Several litigants described the clerks as very reluctant to wait on them. As one litigant said, "they just sit there. Their attitude seems to be that it's the others turn to help. I think they could be more communicative. . . . They could offer more help. . . . It makes me mad. Our tax dollars are paying their

salaries." When asked if the clerks were helpful another litigant responded "only if you ask them a question." As has already been described misinformation is frequently given to litigants by clerks. By not offering assistance the clerks may also mislead litigants. For example, one litigant said when you file a complaint against a business the clerks will ask you who you dealt with and will then write that name down doing business as (d/b/a) and the business's name on the claim form. Two of the cases in the forty-two contested case studies were lost because an individual instead of a corporation was sued. This litigant continued that it would save people time and money if the clerks would tell people to call the Department of State to find out if the business is in fact a corporation.

Many litigants viewed attorneys as too expensive to use in small claims. For example, Margaret Lewis had gone to see a lawyer and paid a \$10 consultation fee. The lawyer told her he could win the \$500 for her but that it would cost \$250. In another case, a business owner called the business's lawyer. The lawyer said he would take the case but that it might cost the business owner a couple hundred dollars. Many also thought their cases were too clear-cut to require an attorney. As Rose Stephens, who sued an automobile repair shop owner for not honoring a coupon for an oil change said, "maybe I should of talked to Bob Ross [her attorney] and let him look at it... but I thought there was no use bothering him over this case. I thought it was clear cut. . . . He should of changed my oil. It wasn't right."

Litigants varied in their assessment of the attorneys who represented them in small claims court. Mr. Charles, whose attorney actively and aggressively controlled the trial, was very pleased with the attorney's performance: "I was very confident in Bob. He seemed very confident in

himself." All litigants did not fare as well with their attorneys. The president of Tallahassee Chemicals was represented by Bill Bales who he described as "a collection lawyer," and added "He's a shyster too. I won't use him again. I would have gotten my regular lawyer but he would have charged me \$60 or \$70 an hour. The collection lawyer takes cases on commission." Two of the litigants in the forty-two detailed case studies sought the assistance of legal services at a local university. One litigant was very pleased with the services he received. Although the lawyer did not represent him in court, he told him where and how to file and explained the court procedure to him, including the need for witnesses. The lawyer also wrote a letter to the defendant saying that if he did not pay within 10 days, legal action would be taken against him. In the other case, the litigant said he received little help from the university legal services. He said he was told to file a claim, but that "it would be his word against mine and that it would be up to the judge to decide."

Several litigants thought they won their cases because they had attorneys; conversely, others thought they lost because they did not have attorneys. One litigant expressed the latter position with, "If you can afford one you win. If you can't you lose all the way around. I can understand why people don't show up. The court makes you look small." Another litigant expressed the belief that you have "to scare people with a lawyer" if you want to win in small claims court. The frustration felt by many unrepresented litigants was summarized by Mr. Hodge who lost his case to a represented party on a technicality: "I definitely think if you don't have to have a lawyer, I think someone should tell you what you need to have."

Summary and Conclusions

Within the Leon County small claims court there is tension between judges, clerks, and attorneys as well as between court personnel and litigants. The judges, for the most part, recognize that unrepresented litigants are at a disadvantage in the court, but they are uncertain how far they can go to assist them without stepping outside of their traditional judicial role. Judges are also ambivalent toward attorneys in small claims court. They view attorneys as making judges' jobs easier, on the one hand, by buffering them from the frequently angry and disjointed grievances of members of the public. On the other hand, some judges think attorneys provide their clients with an unfair advantage. These attitudes are not isolated to Leon County. Many judges interviewed throughout the state as part of the Office of the State Court Administrator's study expressed similar views. These judges, however, appeared to be more open to reform of the system than the judges in Leon County, with the exception of Judge Russell. Many thought that more detailed information should be available to litigants in small claims court. Several thought written materials should be developed, whereas others thought, in sharp contrast to the Leon County judges, that clerks or paralegals could be used to assist litigants. Over half of the judges interviewed supported the use of another type of third party (for example, a mediator) at some point in the small claims process. Several judges, however, did express a belief shared by Judge Cain that such alternatives unnecessarily complicated the system and were unlikely to be successful.

The differences between the attitudes of the Leon County judges and the attitudes of the judges in the statewide study may in part be explained by subcultural differences. Many of the judges in the statewide study were from

urban areas in other parts of the state, whereas all the judges in Leon County were socialized in rural or small-town Southern environments in which there is a general distrust of government and a resistance to its expansion. Furthermore, Southerners believe people should resolve their own problems through church, kin, or neighborhood networks and should avoid direct confrontation, particularly in public (Hill 1977; Taylor 1970; Greenhouse 1976; Paredes, Sebella and Hepburn 1977). Thus the judges in Leon County were very uncomfortable with cases involving interpersonal conflict and with any expression of emotion.

Clerks in small claims court as well as judges perceive their role as stressful. Members of the public and attorneys expect more assistance from the clerks than judges permit clerks to give. As a result the clerks understandably resent members of the public, judges, and attorneys. The clerks were observed to attempt to answer questions from the public, but because of the prevailing position of the court that clerks should simply take claims and process records, they are not properly trained to give advice. On many occasions the clerks were observed to give incomplete or incorrect information. The clerks were also observed to have found ways of informally exercising discretion in court. This phenomenon is common in bureaucracies in which the persons at the lowest levels have no direct say in decisions that affect their jobs (Taylor 1970). Such behavior serves as a means of setting limits on the organization's ability to make unreasonable or unjust demands. The power the clerks have over the litigants in a sense compensates for the lack of power and recognition they are given by the judges. The clerks -- more than the judges who have also been socialized in the wider legal profession -- are part of Cracker society. This creates further difficulties for the clerks and for

members of the public. As Taylor has written, "A Cracker society is a closed society; outsiders are not readily accepted and members find it difficult to accept strangers" (1970:159). This attitude may, in part, explain the clerks' unfriendly attitude toward strangers who come to file claims in their office.

The clerks interviewed in the larger, statewide study had some of the same concerns as the Leon County clerks. These people were also unsure of how far they should go to assist litigants. Much variation was found from court to court in the amount of assistance clerks were providing litigants. However, it did appear that in most courts clerks were permitted, and even encouraged, to give more advice than their counterparts in Leon County.

It was found that a small group of lawyers make regular appearances in small claims court. These attorneys generally represented businesses trying to collect unpaid bills. Small claims court appears to attract marginal members of the legal profession -- lawyers "who are hungry for money" as one litigant described them. The judges generally have a friendly relationship with these attorneys and readily grant most of their requests. Attorneys interviewed as part of the Office of the State Court Administrator study did not express confusion about their role in small claims court as judges did. They perceived their role in small claims court as the same as their role in other courts. They did, however, perceive the judge's role to be different. Many attorneys were dissatisfied with the behavior of small claims court judges. They believed they gave too much help to lay litigants and that they should rule by law and not by equity.

In contrast many litigants thought the judges favored attorneys in small claims court. Several were furious after losing cases to attorneys on what they perceived to be technicalities. Many litigants were also irritated at the clerks

for not offering more assistance. Litigants criticized judges for not being experts and for not facilitating communication between the them and their opponents. Most litigants had very high expectations of judges and tended either not to know or to forget that the judges are bound by substantive law. Litigants, especially unrepresented ones, find it difficult to accept that a person might be legally right but morally wrong or unreasonable. The next chapter details what occurs in small claims court when the legal participants and the litigants, many of whom have different expectations and values, meet in an effort to resolve a dispute.

CHAPTER 6

THE PROCESS

The evolution of disputes that reach the Leon County small claims court will be detailed in this chapter. Of interest is not only what occurs in the court, but what has taken place prior to a person's decision to file as well as what happens after the case is handled by the court. In order to gain this information, litigants were asked about the course of the dispute up to the point of filing and about what had occurred since the court hearing. The processing of disputes by the court was observed directly. Thus the interaction of court personnel and litigants may be described and analyzed as it unfolds during both pretrial hearings and trials. Disputes undergo several transformations as they evolve through prelitigation, to litigation, and finally to postlitigation stages. These transformations entail varying definitions of the same dispute and occur as a result of the attitudes and perceptions of a wide range of persons who have contact with the disputants. As Felstiner, Abel, and Sarat observe, it is not only third parties who transform disputes:

Individuals define and redefine their perceptions of experience and the nature of their grievances in response to the communications, behavior, and expectations of a range of people including opponents, agents, authority figures, companions, and intimates. For instance, in a personal communication, Jane Collier has pointed out that in hunter-gatherer societies a man cannot overlook his wife's infidelities or other men will begin to treat him as if he was unable to defend what he claimed as his. In agrarian societies, such as Spain, a man or woman cannot afford to overlook anything that might be construed as an insult to honor because others will then begin treating that person as if they had not honor. [emphasis added] (cf. Starr, 1978:124-25). (1980-81:638)

In complex societies, members of different groups or subcultures may perceive and handle grievances in different ways. Their attitudes about the

types of disputes that are appropriate for the court may vary. They may also differ in the ways they present their cases to the court. Once disputes reach the court, the legal personnel may not treat all cases and all litigants in the same way. Black (1980) found in a study of dispute settlement methods employed by police that different styles were used for different types of people and different types of cases. The small claims court judges also may respond differently to different types of litigants and different types of cases. These issues will be addressed by examining the details of interaction between the legal personnel and litigants in a small number of cases. They will also to be addressed by reference to the larger (N=291) case file sample. Using the case file data, the relationship between status of litigant and outcome of the case in small claims court will be examined.

The relationship between type of social tie between disputants and choice of dispute settlement forum has been of continuing interest to anthropologists and others (for example, Gluckman [1955]; Nader [1969b]; Collier [1979]; Merry [1979]; Starr and Yngvesson [1975]; Aubert [1969]; Forman [1972]; Macaulay [1963]; Black [1976; 1980]) and will also be addressed in this chapter. As noted earlier, Nader (1969b) and Gluckman (1955) have hypothesized that litigants who have ongoing, especially multiplex, relationships with each other will be more likely to choose conciliatory or informal means of dispute settlement than litigants who are strangers. In addition, people of equal rank may be more likely to compromise than people of unequal rank (Black 1976). Based on these hypotheses, it is expected that before filing in small claims court people with prior, multiplex relationships will have attempted to resolve the dispute by more informal means. Within the small claims court these people would be expected to choose the least formal means of dispute

resolution available. Thus, they would be more likely than those with simplex relationships to resolve their cases by negotiation or conciliation instead of by adjudication.

Much of the data for this chapter are derived from the forty-two detailed case studies and from informal conversations with the small claims court judges. These cases were observed as they occurred in court from first appearance to conclusion. In addition, as many of the participants as possible were interviewed in their homes or places of business. The relationship between litigant type and choice of dispute settlement is addressed using data from the 291-case file sample and the 549-case pretrial sample, as well as from the detailed case studies.

Prelitigation Efforts

According to Sarat (1976) and Domanskis (1976) third parties are called upon to settle disputes only after other dispute processing alternatives have failed. Most litigants interviewed during the course of this research were in fact found to have employed a variety of means, both formal and informal, to resolve their problems prior to filing suit in small claims court. Consistent with the general hypothesis presented by anthropologists (e.g., Gluckman 1955, Nader 1969b), Sarat found in his study of a New York small claims court that those most active in prelitigation dispute resolution attempts were those who had relationships with one another before the incident in dispute. In this study of the Leon County small claims court different results were found. Although the sample of detailed cases is very small (42), within this sample those who made the greatest efforts to settle the dispute before filing in court were those with no relationship prior to the incident in dispute.

Bob Levy v. Myers Exterminators is an example of a case in which a plaintiff with no prior relationship with a defendant made an appreciable effort to resolve a dispute before finally filing a suit in small claims court. Mr. Levy is a student majoring in business at a local university. He lives with his girlfriend in an apartment complex near the university and is a collector of saltwater fish. The apartment complex has a contract with Myers Exterminators to spray the apartment every month. Because of his fish, Mr. Levy had told the resident manager not to allow Myers Exterminators to spray his apartment. The resident manager agreed and told the employee from Myers not to spray Mr. Levy's apartment. When Mr. Levy returned home later that day, he discovered the exterminator from Myers spraying his apartment. Mr. Levy's girlfriend immediately called Mr. Myers and told him the apartment had been sprayed and that the fish could die. Mr. Myers said he would send someone to their apartment to investigate and if any of the fish died to let him know. Several days later the fish died. The girlfriend again called Mr. Myers, and he was, in her words, "mean and snotty" and said he would not pay for the fish.

After the girlfriend's conversation with Myers, Levy and his girlfriend decided to see a lawyer at the university's legal aid office. The lawyer wrote a letter to Myers stating that if he did not pay for the fish within 30 days, Levy was going to take further action against him. Meanwhile Levy also called the Better Business Bureau and the Consumer Services Division at the Florida Department of Agriculture. Consumer Services replied to his complaint within two days, sending him a form to complete, which he then sent to Myers. Myers wrote back to Consumer Services that he had been servicing the complex for some time and had never had any problems. He contended that Mr. Levy was harrassing him. When Myers received the letter from the attorney, he had the

employee who had sprayed the apartment call Levy and deny responsibility for killing the fish. The employee also said Myers was going to make him (the employee) pay for any losses. Levy, angry that Myers had his employee call, went to Myers's office to tell him that the dispute was between the two of them. He brought with him a list of the fish that had died and their cost. Levy had to wait two hours before Myers would talk to him. When he finally saw Myers, he still refused to pay for the dead fish. Levy immediately went to the nearby courthouse and filed a suit against him. In recounting his experience Levy stressed that he had not wanted to go to court and had hoped he would be able to resolve the problem informally. Levy contacted the fish store where he had bought his fish, and the fish store owner confirmed his feelings that Myers was behaving inappropriately. According to the owner, fish are frequently killed accidentally by exterminators and when this happens "most people pay up right away." After filing the suit, Mr. Levy had no further contact with Mr. Myers until the day of the pretrial hearing. Nor did he continue in his attempts to resolve the problem through other channels.

Billy Frank Evans also made considerable effort to resolve his dispute with Cathy Davis Smith before filing in court. Unlike Bob Levy who used both formal and informal means to bring pressure against Myers Exterminators, Billy Evans primarily used his informal networks of friends and kin in attempting to resolve his dispute with Cathy Davis Smith. Billy Evans is a 28-year old high school graduate. He works for the local parks and recreation department as a groundskeeper. He had just restored a 1968 Mercury Cougar. According to Mr. Evans, "I put about \$5000 into that car. I had parked in a parking lot at a bar. . . . This guy came in and told me someone hit my car. I couldn't believe it and thought he was joking. This lady, I'll call her a lady, she was about 34.

She'd been drinking, got mad at her boyfriend, backed out, hit my car, and damaged the whole front end. . . . I took it to three shops and the cheapest estimate was \$690."

Smith did not have any insurance and was driving with a suspended license at the time of the accident. At the scene of the accident, the police charged her with driving while intoxicated. Smith was rude to both Evans and the police. Smith tried to deny she hit his car, but Evans had witnesses who told the police they had seen her hit his car. According to Evans, when the police came Smith started cursing at them. They arrested her and told her to sit in the police car, but she climbed out the window and the police had to handcuff her.

Ms. Smith had refused to give Mr. Evans her address or phone number, but he knew several people who were acquainted with her, and they gave Evans the woman's phone number and address. Mr. Evans tried for four months to get the money from Ms. Smith to repair his car before filing in small claims court: "I tried to make an out-of-court settlement. I didn't want to cause the lady any trouble, but she just beat around the bush. I understood she wasn't working. The damage was \$700, but I was going to save her the trouble of court and take \$500. At the time I couldn't even drive my car. She thought \$500 was outrageous. The estimates were all from well-known shops. . . . She never offered to pay anything." Evans called Smith repeatedly. During each conversation she said a check would be in the mail, but Evans never received any money from her. On at least one occasion Evans's mother also called Smith and, according to Smith's testimony during the pretrial hearing, was "very hostile" on the telephone. After one of the phone calls from Evans, Smith sent her boyfriend to tell Evans she did not have to pay. Evans and the wife also

made several trips to her house, which is located in an adjacent county. She told him she would come over to his house and pay following the last of their visits, but she never appeared. Not until this point did Evans attempt to obtain official assistance in his dispute; the day after Smith was supposed to come to his house to pay him Evans called the Office of the Insurance Commissioner. He was told there was nothing the office could do to help him, but that he could file a claim against her in small claims court. That very day Evans went to court and filed a suit against her.

Like Evans, several other litigants decided to file in small claims court only after they has gotten the "runaround" from the other party. Mr. Vine, a black barber who owns several rental houses, had contracted with Mr. Wood, a black contractor and hog farmer, to repair the roof on one of the rental houses. Vine gave Wood several hundred dollars in advance for materials. Several days after Wood began the job, the elderly woman who was renting the house died. Vine asked Wood not to work on the day of her funeral because the house was going to be full of mourners. According to Vine, Wood never returned to the job, offering a long list of excuses such as he had the flu and he had stepped on a nail. Vine called Wood many times either early in the morning or at night but was always told he was not there. After three months of this kind of runaround, Vine hired another contractor and brought suit against Wood for the money he had paid him.

In several instances individuals did not attempt to resolve the dispute through informal channels before filing suit in small claims court. Several litigants went straight to court or to another formal organization. Another litigant resorted to violence before eventually filing a suit in small claims court. In a sense these litigants short-circuited the normal dispute settlement

process, catching their opponents off-guard and quickly escalating the dispute. Home Lighting v. Massadourian, partially presented in Chapter 4, is such a case. According to Mr. Marin, the owner of Home Lighting, most complaints between him and customer are settled in the store: "We try to keep the customer happy, first we send letters then we make phone calls . . . then we send letters stating if they don't pay within 30 days we will file in court." In the case against Massadourian, Marin bypassed the preliminary steps and filed a claim against Massadourian in small claims court. As described in Chapter 4, Massadourian had stopped payment on a check for a lighting fixture after Marin refused to allow him to return the fixture because more than 24 hours had elapsed since the time of purchase. Marin attempted to explain his behavior: "If he hadn't have gotten so angry I'd probably would have tried to work something out with him, but he immediately threatened me with court and then went to Action Line." Massadourian did in fact go immediately to Action Line. The person at Action Line called Marin and tried, without success, to negotiate for Massadourian. Massadourian also called Consumer Services at the Florida Department of Agriculture, but was told that there was nothing they could do. During the court hearing, Massadourian actively and aggressively faced Marin. In spite of Massadourian's active defense, he lost the case, because in the judge's words, Mr. Marin was "within his rights legally." The day he received the court's decision, Massadourian mailed a check to Marin.

Like Mr. Massadourian, John Pappas was so angry that he went immediately to a third party before attempting an amicable resolution of his problem with Auto Works. Pappas, a young college graduate and a second generation Greek-American, had taken his convertible to Auto Works to have a new carpet installed. When he picked up the car later that day, he noticed a

tear in the convertible top. The owner of the shop, Mr. Kelly, was not there so he asked the owner's wife to have the owner call him. During an interview, Pappas said he did not want to deal with the owner's wife; he felt insulted that the owner was not there to talk to him. He obviously considered the wife a lower status individual simply because she was a woman and felt that he should not have to discuss his complaint with her. Meanwhile he went to the Consumer Affairs Division and filed a complaint. "Maybe I shouldn't have done it but I was mad and wanted to get him," explained Pappas. As in the case of Levy v. Myers Exterminators, Consumer Affairs wrote a letter to the business stating the consumer's complaint. Kelly was shocked to receive the letter and wrote a letter to Consumer Services stating that his shop was not responsible for the damage to Pappas's convertible top. Again the person at Consumer Affairs said there was nothing further the office could do and suggested that Pappas take the case to small claims court, which he did. During an interview Mrs. Kelly expressed perplexity over Pappas's behavior. She said, "the man never came back. If he had Sam [her husband] would have tried to satisfy him. People have complained about things that didn't happen here but he will fix them just to keep them [the people] happy... We got a letter from Consumer Services.... I tried to call Mr. Pappas at his office, but he said he never received the message. I don't know why he did it. I just don't understand.... was the first time anyone has taken us to court or complained to Consumer Services. It was a shock."

The dispute between Hasan Abdul and Harry Clay escalated to violence before becoming a small claims court case. Hasan Abdul, a 20-year old Iranian student, and Harry Clay, a 30-year old black student, had shared an apartment for several months. Their relationship apparently began to deteriorate when

Abdul's girlfriend, a pretty, white American student, moved into the apartment. Shortly after she moved in, Clay moved out. When he moved, Clay told Abdul he would pay his share of the phone and utility bills when the bills arrived. The next month Clay called Abdul and said he did not have any money, but would pay the bills the following month. Abdul agreed to wait. According to Abdul, Clay called the following month at midnight and said he would not pay. The day after the call, Abdul went to see the manager where Clay works "to tell him Harry owes me money and to make problems for him . . . but the manager was his friend." Defeated in his effort to cause trouble, Abdul left the office. On his way out, Clay grabbed him in the parking lot and, according to Abdul, beat him up. Abdul then filed a criminal complaint against Clay at the sheriff's office. Meanwhile Clay also went to the sheriff complaining that Abdul had threatened him with a knife and punctured his tires. The sheriff was supposed to call Abdul about his complaint against Clay, but did not. At this point Abdul, deciding that nothing was going to come of his criminal complaint against Clay, filed a suit against Clay in small claims court for \$53.41 in phone and utility bills. Abdul had used small claims court successfully the previous year to obtain money he believed was owed to him. In this other case, he had filed suit over damages from a car accident.

The behavior of Massadourian, Pappas, and Abdul has been described not because it is typical, but because it is unusual. Hall's (1976) concept of "action chains" may help explain this behavior. As has been shown, these individuals, in contrast to the other litigants in the case study sample, did not try to resolve the dispute directly with the other party before calling in a third party or resorting to violence. "Action chains" is a concept borrowed from ethology and refers to a set sequence of events in which two or more individuals

participate. A common goal can be reached only after each link in the chain of action has been completed. According to Hall, members of different cultures expect different sequences of events to occur during a dispute. Northern Europeans' traditional response to a grievance is to begin with nonverbal cues and to body messages, then to proceed to verbal hints, verbal confrontation, and then, but only then, to legal action. Force is used only as a final resort after legal action has failed. The pattern among Arabs and other Middle Easterners is, according to Hall, quite different. In these cultures verbal confrontation is to be avoided at all costs and the application of law or the show of force is likely to be the first inkling that something is wrong. Obvious problems result when persons in a dispute are members of different cultures or subcultures. As Hall states:

Incorrect reading of the adumbrative sequence of an action chain not only deprives the participant of the steps, stages and way stations that tell them where they are and permit reconsideration and face-saving withdrawal but, what is more serious, leads to meteoric and unpredictable escalation of disputes to the point of no return. (1976:137)

This is precisely what occurred in the disputes involving Mr. Massadourian, Mr. Pappas, and Mr. Abdul. These three men were in fact socialized in cultures other than those of their opponents. Mr. Massadourian is of Armenian descent and grew up in France; Mr. Pappas is of Greek descent; and Mr. Abdul is Iranian. All these men followed the "action chains" described by Hall as characteristic of Middle Easterners, much to the dismay of their American opponents.

In several cases attorneys were the crucial factor in a person's decision to file suit in small claims court. As described in Chapter 4, Margaret Lewis decided to file suit against her sister-in-law Lenora Lewis only after she talked

to a lawyer and he told her "they're playing you for a fool." In another case, Susan Coleman and Heidi Span, two young white college graduates, decided to file a suit in small claims court as a result of a casual conversation with a friend who happened to be an attorney. Ms. Coleman and Ms. Span were angry because an apartment manager had rented an apartment to someone else even though they had given her a deposit. As a result they had to find another apartment and could only find one that cost \$50 more a month. Although they felt they had been treated unfairly, they did not think there was anything they could do until their attorney friend offered to file a case in small claims court in their behalf.

Attorneys may also function to "cool out" cases. Macaulay describes this process as it occurs between consumers and attorneys:

Consumers bring to lawyers their grievances against retailers based on lay perceptions of negligence, defect or fraud. Most often the amount of money involved is relatively small. Typically (although not always) the lawyer "cools out" the client, convincing him or her that the grievance is not serious, cannot be remedied, or simply is not worth pursuing. (1979:647)

In the case of McKay v. Best Employment Service, the plaintiff was "cooled out" by an attorney and convinced not to pursue his claim beyond the pretrial stage. At the time of the interview, however, Mr. McKay, a sixty-year old accountant of Irish descent, still felt wronged by Best Employment. Throughout my three-hour interview with him, McKay sat cutting up little pieces of paper with a large pair of scissors. McKay had moved to Tallahassee several years ago from West Palm Beach to work as an internal auditor for the state. Several months later his department was reorganized and he lost his job. He then went to work for a construction company, but again lost his job because of a slump in the construction industry. Desperate for a job, he went to a large and well-known employment agency. Before the person at the agency would talk to

McKay, he had him sign a contract stating that he would pay almost 10 percent of his annual salary from any job he accepted through the agency. He was also told, according to McKay, that there were "plenty of good positions" and that the agency would find him a job commensurate with his experience and education. First, Best Employment sent him to an automobile dealership where he was told they wanted a typist, not an accountant. Next, McKay was sent to a plumbing company. According to him, the job "didn't look too unpleasant" so he decided to take it. He did express some reservations about the job to the person at Best Employment, but was told not to worry, that the job would "shape up."

McKay was hired as a bookkeeper at \$8,840 per year and was put in charge of the company's accounts receivable. Part of his job was to call people listed on the company's records as not having paid their bills. He was very embarrassed to find that three of five people he contacted had in fact paid. Another employee, the company's accountant, had previously been in charge of this area. This man, according to McKay, was a former Navy pilot, with an electronics not an accounting background. The accountant had talked the company president into buying a small computer, but he refused to teach anyone else in the office how to use it. The accountant also greatly disliked the general manager, for whom McKay worked, and refused to share information with her. McKay felt trapped in an impossible situation and told the manager within seven or eight days that he was quitting the job. He thought Best Employment was guilty of fraud because the job was not what they had portrayed it to be and refused to pay them the remainder of their fee (\$450). He had already paid \$300.

McKay was willing to accept the loss of \$300 until Best Employment had, in his words, "a lawyer hound me" for the remaining \$450. "He [the lawyer] made personal remarks to my wife about my failure as a man and called her a liar" when she refused to give him McKay's phone number at the state agency where he now worked. After these calls, McKay filed suit against Best Employment for the \$300 he had already paid them. Before his first court appearance he believed he had a strong case: "The job didn't work out. I thought I had the case in my favor. I had a contract they were going to get me a job equivalent to my skills -- like hell, they send you out blind, they don't hold up their end of the contract." After Mr. McKay filed suit, Best Employment had their attorney file a counter suit against Mr. McKay for \$450. Mr. McKay, as described in Chapter 5, was intimidated by this action and decided to seek the advice of an attorney. He selected an attorney because the attorney's last name was the same as his. McKay's behavior was not purely idiosyncratic. Acceptance of strangers with the same last is common among individuals of Irish and Scots-Irish descent (Taylor 1970). The attorney selected by Mr. McKay had advertised in the local paper, was quite young, and, according to Mr. McKay, "looked a little hungry." The attorney strongly advised Mr. McKay not to fight the case, but to allow him to try to negotiate a compromise. "He felt if I fought I would lose." In the end Mr. McKay's attorney worked out a compromise with Best Employment's attorney, and McKay paid Best Employment \$200 instead of \$450.

McKay believed that his case against the employment agency was "too big for one little guy." He also thought he was "just one small victim" in a larger pattern of fraudulent business practices. According to McKay, Best Employment had placed several other people in the job he held. They have all left

after a short period of time. "If Best Employment has just a few places in town like that, they can make a lot of money, with little work." McKay thinks that employment agencies should be investigated and has written to several national and state legislators about his experience, but he had not received any response from them at the time of my interview with him.

Persons other than attorneys were also found to transform grievances into court cases. In the case of Hodge v. Searcy, partially described in Chapter 5, Mr. Hodge decided to file suit against Mr. Searcy after talking with a mechanic. Hodge had taken the engine Searcy had recently worked on to a mechanic to ask him why the engine had blown up. The mechanic said that he was almost certain the engine had blown up because the push rods had been tightened too tight and signed a statement to that effect. Hodge also informally discussed the blown engine with friends in his office. In response to my question, "Did they give you any advice?" he said, "I didn't really get any advice . . . Everybody at the office thought I should file, so I called small claims court."

Filing A Claim

In order to file a claim, individuals must go in person to the office of the deputy clerks for the civil division of the county court. As pointed out in Chapter 5, this office is several miles from the downtown courthouse, a location that creates confusion for many litigants. The office is not marked "small claims court" but is instead labeled "Summary Division Civil Claims," which also confuses litigants. Likewise the phone is not listed under small claims court but under the civil division of the county court. As described in Chapter 5, the litigants receive little assistance from the clerks, are often left waiting at the counter, and when they do ask questions, they may be given

incorrect or incomplete advice. When plaintiffs file they are given a date and time to appear for a pretrial hearing. The defendant's only contact with court is a summons which states:

You are hereby notified that the above named Plaintiff has made a Claim and is requesting Judgment against you as shown by the foregoing Statement, together with Court Costs and any further costs which may accrue. The Court will hold a PRE-TRIAL HEARING on the claim on:

_____, 19__, at _____ M, o'clock in Courtroom #__, Leon County Courthouse, Tallahassee, Florida

* * *

YOU ARE REQUIRED TO BE PRESENT AT THE PRE-TRIAL HEARING IN ORDER TO AVOID ENTRY OF A JUDGMENT BY DEFAULT. IT IS NOT NECESSARY TO BRING WITNESSES TO THIS CONFERENCE.

TO THE PLAINTIFF: This is also your memorandum of PRE-TRIAL HEARING. You are requested to be present at the time, date and place set out in the foregoing summons.

For all of the litigants interviewed in the case file sample, filing a claim marked the severing of all attempts to reach a settlement outside of the court. None of the litigants even had contact with one another between filing and the pretrial hearings.

The Pretrial Hearing

Pretrial hearings are usually scheduled for 9 o'clock each Monday morning. I arrived at 8:50 one Monday morning to observe pretrial hearings for the first time. At this point in my research, I knew little about the court and my perceptions may have been similar to those of many first-time plaintiffs and defendants. As I entered the lobby of the downtown courthouse, I noticed there was no sign indicating where I might find small claims court. I had called the clerk's office and had been told pretrial hearings for the summary division of the civil division of county court were held in Courtroom 4. This information

is also provided to litigants on the summons they receive from the court. A sign by the elevators indicated that Courtroom 4 was on the second floor. Since I was early I expected to find the courtroom empty, but as I opened one of the doors, I was confronted by a whirl of activity. The benches in the public section were filled with people. Several poorly dressed, unshaven males were sitting on the front bench to the right of the judge while at the table in front of the judge were two well-dressed white males and one well-dressed white female. Periodically one of these individuals would leave the table to confer with one of the individuals seated on the bench.

The courtroom itself was traditional in design with a large, raised judge's bench and a railing separating the participants from the observers (Figure 6.1). The room exuded a mixture of government office shabbiness and church-like richness peculiar to courtrooms. There was a sign on the judge's bench which said "Judge Cain, Summary Claims." At 8:55 a white male in a green uniform entered the courtroom through a side door. "All rise, Leon County Court is now in session. The Honorable Judge Cain presiding," said the man, as the judge, in his black robe, entered the courtroom. After he was seated, the judge began talking about "first appearances" and their purpose: "to inform defendant of the charge, to discover the ability of the defendant to pay for a lawyer -- if the defendant can't afford a lawyer, the court will appoint one -- and to set bond."

The judge called the first case: "Charles Harris, step up to the microphone." A young white male, dressed in a white T-shirt and jeans got up from the bench to the right of the judge, and walked over to a position in front of the judge. He stood silently and motionless with his left arm behind his back, his hand clenched in a fist. "You are charged with stealing a tractor from DOT [Department of Transportation], the factual basis of the charge . . . you were

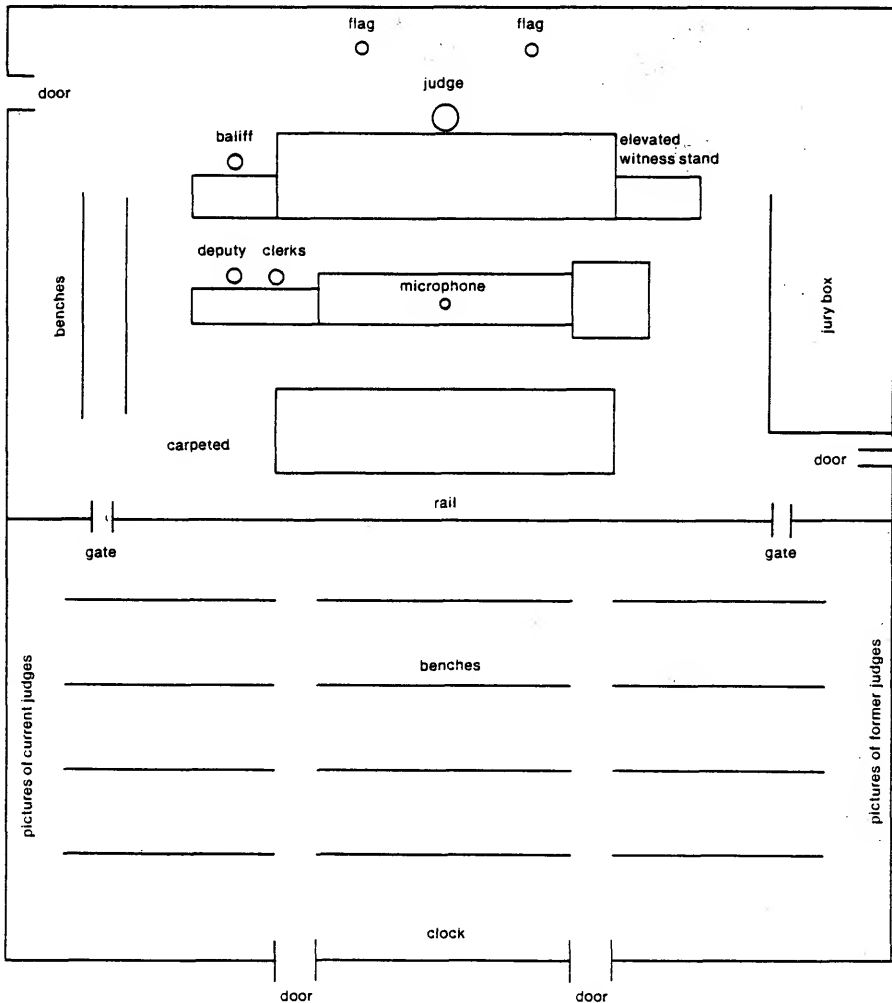


FIGURE 6.1
SETTING OF PRETRIAL HEARINGS

found driving a DOT tractor. You are charged with grand theft -- stealing property worth \$100 or more." The judge continues, giving details of the man's arrest. Then the judge says "Do you wish the court to appoint an attorney?" Before the man has a chance to answer, the judge asked, "Are you working? Where? How much do you make?" The man replied, almost inaudibly, "\$70 to \$150 a week." The dialogue between them continued:

Judge: Do you have a family?

Defendant: I'm married and have 4 children. I rented the tractor for \$25 . . .

Judge: I have no authority to determine that. . . . Do you have a checking or savings account? land? a house?

Defendant: A mobile home.

Judge: What did you pay for it?

Defendant: \$3800.

Judge: Where do you work?

Defendant: Panhandle Forklift

Judge: If you get out on bond, can you still work?

Defendant: Yes, Sir.

Judge: I'm going to set bond, but I'm not going to appoint an attorney at this time. . . . Have you ever been in trouble?

Defendant: No

Judge: Bond set at \$500. Do you understand how to get out? If you see a bail bondsman, you will pay about 10 percent.

The defendant then returned to his seat and the judge called the next case. The next two cases progressed in a matter similar to the first case.

At 9:10 a change of characters occurred in the courtroom. The individuals at the table in front of the judge, who were attorneys either from

the state attorney's or public defender's office, and the individuals on the bench, the defendants, left the courtroom. A young white man and a young white woman, both formally dressed, entered the courtroom from a side door carrying piles of papers and folders. They took seats at the table directly to the right of the judge. Judge Cain began to speak, "When I call your name, step forward. This is pretrial in summary claims, where we try to settle disputes. If you are not able to settle, I will set for a trial date. Part of my job is to urge people to resolve their differences. If they can't, I'll do it for them." He immediately began calling cases in rapid succession. Within 45 minutes, 46 cases were called, 27 of these were brought by a national retail chain against customers for nonpayment of credit card accounts. The sequence of events and the language used by the judge were extraordinarily confusing. Bottlenecks frequently occurred at the front of the courtroom, with litigants stopping to talk to the deputy clerks while litigants from the next case were talking to the judge. Words and phrases such as "final judgment," "conditional judgment," "dismissed," "default," "proof of debt," "court costs," and "contract" were bantered about without any explanation from the judge. I left the courtroom that day wondering if the litigants were as confused as I was.

Over the course of the next year and a half, I attended twelve other pretrial hearings recording observations in over 500 cases. During this time I began to understand the process that was initially incomprehensible to me. On many of these occasions "first appearances" for all criminal cases, both felony and misdemeanor cases, were still in progress when I arrived as had been true for my first visit. Many people in the public seating looked perplexed and sometimes individuals asked me what was going on. On days when there were no first appearances or when they had been disposed of earlier, I arrived to find

most people in the courtroom sitting quietly waiting for the court to begin in a way reminiscent of the way people sit in church. Usually about half of these people were white and half were black with all ages from small children to the elderly represented. Many of these individuals were casually dressed in, for example, T-shirts and slacks or work clothes. In the front rows and in the back of the courtroom were clusters of much better dressed and more vocal individuals; these were the small claims court regulars and were either business representatives or attorneys. Before the judge entered, the court regulars sat in the front or stood in the back of the courtroom casually chatting with one another.

The judges' individual personalities and attitudes were expressed in their behavior during pretrial hearings. Each judge began the hearings with a different set of remarks. Judge Ryan's comments were generally the longest (about 7 minutes) and the most complete of any of the judges, although on two occasions he was observed to walk in and to begin calling cases without any introductory remarks. Usually, however, Judge Ryan began small claims pretrials with some variation of:

This is small claims court pretrial conference to see if there is any chance for you all to work things out. If not, we'll see how much time it will take for the trial. I will enter a default if the defendant doesn't show up, but you still have to prove your case to me, then I'll enter a final judgment. If the plaintiff doesn't show up, I'll dismiss the case. If you can't pay all of what you owe, you can work out installments. If you are the defendant and you don't feel that you owe the money, the next step is for the plaintiff and the defendant to go into the hallway and in an orderly manner the plaintiff should tell the defendant why he owes the money; then the defendant should tell the plaintiff why he does not. Talk one at a time. I require a good faith effort at compromise before I'll set for trial. If you're not able to resolve the case, we'll talk about it for a few minutes. You will leave here today knowing when the case will be

heard. On the trial date, bring all your papers and witnesses. You don't need them today. The safest thing to do is to subpoena witnesses, then if they don't show up, you have a reason to postpone the trial.

Judge Cain's remarks were similar to Judge Ryan's, but provided no information about the trial nor was he as firm as Judge Ryan about the requirement for litigants to attempt to compromise:

When I call your name, step forward. This is pretrial. I won't take any testimony today. If one side fails to show up, I'll tell you what is going to happen. If the defendant doesn't show up, I will enter a default and ask you about the circumstances before entering the final judgment. If the plaintiff isn't here, then the case will be dismissed. I might ask you to step outside in the hall and talk. We've found over the years that it's better if people can resolve their own differences.

Judge Faraday's remarks were about the same length as Judge Cain's, but were delivered at a much faster rate than the remarks of either Judge Ryan or Judge Cain. They are also contained a larger number of formal legal terms than the opening remarks of the other two judges:

We're here to dispose of pretrial cases in civil matters. It will be helpful to explain what we will do. I'll call the cases. If the plaintiff is present and the defendant is not, I'll enter a default and a final judgment on proof of the claim. If no plaintiff is present, they can try one more time. Then I'll dismiss the case with prejudice. In the event both parties are present I will ask them to work out a settlement. If they can't, I'll set for trial at a later date.

During the course of the research, Judge Faraday stood for reelection and was defeated by Bob Russell, a young, local attorney. As described in Chapter 5, Judge Russell was concerned about making small claims court more accessible to members of the public. Shortly after Judge Russell took office the scheduling of pretrial cases was changed. At 9:30 am cases in which neither party was represented were scheduled and at 10:30 am cases in which one or

both parties were represented were scheduled. Judge Russell's opening remarks at the beginning of the 9:30 hearings were consistent with his attitude of small claim as "a people's court:"

Ladies and gentlemen, this is small claims court, part of the civil division of the county court. I will call the docket. As your name is called, step up to the microphone and I'll go over the claim. The plaintiff is the person who filed the claim; the defendant is the one filed against. If both sides are here, even if you've talked, I'll ask you to step outside and talk one more time. Even if you've talked till you are blue in the face, step out into the lobby and talk again. You'd be surprised how many cases are settled [this way]. If you can't resolve, I'll give you a date for a hearing. At that time bring all your evidence and witnesses. If you forget, we won't stop the hearing. If you need help subpoenaing witnesses, the clerks will help you. If the plaintiff is here but the defendant is not, default will be entered and you will receive the final judgment in the mail. If there is no plaintiff, the case will be dismissed. The plaintiff will be able to file one more time. If both the plaintiff and defendant are here and have worked out payments, I will issue a conditional judgment. If you have any questions, I'll be happy to answer them.

In sharp contrast to his behavior at the 9:30 hearings, at the 10:30 hearings Judge Russell made no explanatory comments. He simply walked in, sat down, and said "as I call the name of the party you represent, please step up." Judge Russell has scheduled hearings for cases with attorneys and for cases without attorneys separately in part so that he can give more assistance to unrepresented litigants. By his behavior at the 10:30 hearing, he is, however, overlooking that fact that practically none of the defendants at the 10:30 hearing have an attorney. They are as much in need of information about court proceedings as litigants at the 9:30 hearings are.

During the pretrials themselves the judges' styles varied, primarily as a result of their different personalities. For example, Judge Ryan was good natured and "folksy" frequently directing jokes to both the court staff and litigants. Judge Cain and Judge Faraday were businesslike, although Judge Cain was much slower and deliberate in his actions than Judge Faraday. Judge

Russell, the newly elected judge, was trying hard to please everyone. For instance, he ended each case with an out-of-place sounding "Thank you'all for coming." Despite these differences, there was a striking similarity among all the judges. They all refused to allow discussions of the details of any particular case during pretrial hearings. Judge Russell's remarks during the pretrial of Lloyd and Rose Cole v. Brian White d/b/a White's TV Service were typical. Rose Cole, a young black woman, was present at the pretrial as was the attorney for Brian White, a young white man. Mrs. Cole was suing Mr. White for \$279, the cost of her television, which had been stolen from his shop. The following dialogue occurred between the judge and the litigants:

Judge: Mrs. Cole?

Mrs. Cole: I would like to enter

Judge (interrupting to attorney): Is this matter contested?

Attorney: Yes sir. I don't think she has a cause of action. Mr. White's business was burglarized and the set was stolen. He had no insurance. He is not liable. He will be glad to talk to her, to replace it with another set if she will pay the repair bill. I feel the law will show he's not liable.

Mrs. Cole: I tried talking to him He refused to talk to me.

Judge: Let's not get involved today. You refused to talk. If I ask you [to talk] you are required to.

Mrs. Cole: I did talk.

Judge (to attorney): How long will it take to hear case.

Attorney: Five minutes. I have citation to law.

Judge: I will set for one hour. My calendar is a little confused. I'm new. Will send notice in mail for hearing.

Judge (to Mrs. Cole): Bring witnesses. If you hire an attorney that's fine. Have attorney get in touch with Mr. Hampton [Mr. White's attorney] .

In this example, not only did the judge refuse to hear the details of the case, but the flow of communication was clearly between the attorney and the judge. The judge even assumed, incorrectly, that the unrepresented litigant had refused to talk with the other party. The plaintiff, prepared to present evidence, certainly felt confused and excluded.

When the judges do question litigants during pretrials, they almost always ask for documentation concerning the amount of the claim. For instance during the pretrial of Abdul v. Clay, Judge Ryan ignored the obvious, on-going conflict between the litigants while questioning them about the amount of the claim:

Judge: Mr. Clay, Mr. Abdul alleges you owe him \$53.41 as your share of the phone and utility bills.

Mr. Clay: I admit to owing the phone bill, but since that time he has slashed my tires

Judge (interrupting): That is not an issue here. Only remaining part is the utility bill. How much is that?

Mr. Abdul: \$23.

Judge: What period of time are the bills for?

Mr. Abdul: For January.

Judge: For when?

Mr. Abdul: From January to February 10.

Judge: Mr. Clay when did you move out?

Mr. Clay: I can't recall. I think it was in February.

Judge (to Mr. Abdul): Do you remember when?

Mr. Abdul: At the end of February.

Judge: All you are seeking then is through February 10.

Mr. Clay: I know I paid. I always paid in cash.

Judge: Now how am I going to decide. The burden will be on the plaintiff to prove he didn't pay. I will set for trial. Your word is proof when you are under oath, but if you are both believable, you [the plaintiff] will lose the case.

Mr. Abdul: Does he have to prove he's paid.

Judge: No, he doesn't have to open his mouth until after your testimony, then he will have to argue. He admits the phone bill.

Mr. Clay: . . . but what about my slashed tires?

Judge: The tires are not before me . . . set for trial.

Conciliation is supposed to be a part of the judge's role in small claims court. The Florida Rules of Summary Procedure state that "at any time before judgment the judge should make an effort to assist the parties in settling the controversy by conciliation or compromise" (Rule 7.140(d)). In contrast to conciliators or mediators in tribal and village societies, the judges in the Leon County small claims court do not take an active role in resolving disputes. During the pretrials the judges' concept of conciliation is to ask the litigants to go into the hallway and to talk. The judges vary considerably in the amount of pressure they exert on litigants to talk. Judge Cain and Judge Faraday generally ask the litigants if they would like to try one more time to settle the case. Judge Ryan is more insistent that litigants talk. Community Self-Help v. Linda Moore is an extreme example of the pressure the judges exert on litigants to resolve cases. Community Self-Help was represented by a middle-aged white man in a gray suit. He stood with his arms crossed against his chest throughout most of the proceedings. Linda Moore was a young, attractive black

woman in an expensive looking, camel hair coat. The following dialogue occurred between Judge Ryan and the litigants:

Judge (to defendant:) Plaintiff says you owe money as a salary advance and for long distance phone calls. Is there a dispute?

Defendant: Yes.

Judge: Have you talked to this gentleman?

Defendant: No, I need to talk to an attorney. I don't owe the money

Judge (interrupting): Pretrial is to settle. You are going to have to talk to this man right now before I'll set for trial.

Plaintiff: Then what do we do?

Judge: Come back in and if you can't agree, I'll set for trial. Sometimes in the telling in an ordinary manner you'll agree. This is not a criminal case. So you can't incriminate yourself.

The plaintiff and defendant left the courtroom and returned several minutes later and sat on the bench to the right of the judge. The plaintiff requested a trial, but the request was denied by the judge who said: "I can see from your faces you didn't talk enough. I will not set for trial if you refuse to talk. Talk one at a time. Let him talk and then you talk." The litigants again left the courtroom and returned 10 minutes later, at which time the judge said angrily "[I can see] you haven't resolved anything," but this time he set the case for trial.

Generally the only type of conciliation that occurs during pretrial hearings consists of the judge asking about the terms of repayment in cases in which the defendant was present and admitted the debt. In these cases the judges usually ask the defendant how much he or she can pay a month and then they ask the plaintiff if that amount is acceptable. If the plaintiff says it is not

enough, the judge will ask the defendant if he or she can pay more. This type of exchange continues until the plaintiff agrees. McEwen and Maiman found a similar situation in Maine small claims courts that have a mediation option: "Even in the few cases where probing into the history of a relationship might be appropriate, small claims mediation is quite directive and generally focused on issues relating to the amount of the claim and responsibility for it" (1981:255). In many cases, in Leon County the judge will simply ask the defendant to go into the hallway and "work something out" with the plaintiff. In one observed case, when a plaintiff thought the monthly amount proffered by the defendant was too low, the judge said, "you'd better take what you can get."

On only one occasion was a judge -- Judge Cain -- observed to participate in conciliation beyond the narrow issue of terms of repayment. Judge Cain generally takes a more active role in pretrial hearings than the other judges. He also gives more concrete advice to litigants insisting on a trial, as the following case illustrates. The incident leading up to the case Evans v. Smith has been described earlier in this chapter. The following dialogue occurred at the pretrial hearing:

Judge: Mr. Evans is seeking judgment against you from an automobile accident.

Do you admit or deny?

Defendant: I admit that I'm at fault, but I'm not sure of the total damages.

The investigating officer said I had a right to three estimates.

Plaintiff: She has made no effort to pay me, even \$500.

(From the back of the courtroom an older woman starts waving her hand and says, "Judge may I say something?")

Judge: No Ma'am. I'll take care of it. I will set it for trial if you want me to, but an affidavit [from a damage estimator] will not be enough. Let me see the estimates.

(Plaintiff hands estimates to judge)

Judge: Well like I said. It's going to require someone to come in to testify. . . . She has a right to the estimates and to get someone else to look at the car and give estimate. . . . Is the car fixed?

Plaintiff: Yes sir I fixed it myself out of my pocket. I still haven't painted it.

Defendant: [Someone] said the estimates are too high.

Judge: It has to be someone in the repair business. You were advised in traffic court to get three estimates?

Defendant: Yes, . . . and then I went to his house and the lady said it was too late, that he had already filed.

Judge: All I can do is set it for a hearing. If you can't resolve we will set it for a hearing. If you do resolve, call and cancel. Do you have any questions?

Plaintiff: How long will I have to wait before I get my money?

Judge: You will have to wait until after the hearing.

Plaintiff: I don't understand. I've already had my car repaired. . . . It's been three or four months now.

Judge: If you want to, you can sit down now [and talk] and come back.

Defendant: I don't believe we can talk.

Judge: It's not uncommon for people to settle their differences even when they think they can't. A year or so ago there was a case that involved the death of a youngster. The case was settled for half a million dollars after the jury had begun deliberating.

Defendant: We can't communicate. The last visit I made to his home the lady [the plaintiff's mother] was very hostile.

Judge: OK. I will set for trial, but you all are going to have to communicate.

Plaintiff: The damages are close to \$700 but I'm willing to make an out of court settlement for \$500. I had to pay for the parts out of pocket.

Judge: Let me suggest something else. The estimate was from Capital City Mercury? Do you have copies?

Plaintiff: I gave copies to her boyfriend.

Judge: Let's leave him out of it. Why don't you write the names of the places down and let her go and talk to them. Do you remember the estimates?

Plaintiff: Not exactly, you honor. They were all over \$500.

Judge: Get a pencil and paper from the clerks . . . but you all are going to have to communicate or there will be no need for a hearing. If he brings in people and you disagree with the amount of damages, you will have to prove.

Defendant: My house is going into foreclosure right now. I can't afford to pay.

Judge: Are you working?

Defendant: No sir.

Judge: What could you pay a month?

Defendant: \$75.

Judge: I can't make him take it. He has a right to the whole amount.

Defendant: I'm trying to sell my car and my house is up for sale.

Plaintiff: How much are you asking for you car?

Defendent: \$350 or \$400.

Plaintiff: I'll take her car for damages on mine.

Defendant: The brakes are bad.

Judge: Do you have the title? There are no liens against it? Is it in your name?

Defendant: It's in my step-dad's name.

Judge: Will he sign it over?

Defendant: Yes.

Judge: I will set trial date, but if you are satisfied, I will cancel. . . . Before you leave stop outside and make arrangements.

In this case, the judge acted as a reluctant mediator or conciliator. He was primarily interested in giving the litigants information they would need for the trial, but he also suggested ways for them to resolve the case without going to trial. When the plaintiff suggested a solution (taking the defendant's car), the judge went along with it and asked several legally relevant questions.

None of the judges ever insists that attorneys go into the hall and talk. Instead they ask the attorneys how long it will take to hear the case and then set the case for trial. The judges also routinely grant requests from attorneys. The judges apparently do not ask attorneys to talk because judges assume that attorneys "know" to attempt to negotiate before filing a case in court. Judges act as though they are unaware that, as has been shown, most unrepresented litigants also attempt to resolve the problem informally before filing in court. Once unrepresented litigants file, like attorneys, they have given up hope of resolving the case on their own and believe that an impartial third party is necessary. For this reason, all litigants in the case studies considered the pretrial hearings "a waste of time." In several cases the hostility between litigants was even exacerbated during the pretrials. My interviews with

litigants indicate that discussions in the hallways are more likely to be used for expressions of hostilities than for positively attempting to work out problems, contrary to judges' conceptions of these discussions.

Judges consider the discussions in the hallway to be negotiations with the two principal parties each calmly stating his or her side. According to Gulliver (1973), in negotiation both parties are the decision makers and the settlement reached is one to which both agree. Through the exchange of information, each side learns about the expectations and requirements of the other and as a result shifts their own demands to a point where they agree (Gulliver 1979). However, Gulliver is describing a situation in which both parties have approximately equal status and power, a situation that rarely occurs in small claims court. Coercion more aptly describes the process in small claims court whereby the more powerful opponent attempts to impose his or her will on the other. For example, in Hodge v. Searcy the judge asked Mr. Hodge if he would be willing to go into the hallway and to discuss the case with Mr. Searcy. Mr. Hodge replied that he thought such a discussion would be a waste of the court's time. He did, however, agree to go outside and to try to talk. In an interview, Mr. Hodge reported that Mr. Searcy's attorney said, "we should try to settle this to save both parties [from] embarrassment." In response to my question "did he offer a settlement?," Mr. Hodge replied, "He suggested I forget it. He said I didn't have a case. . . . Mr. Searcy was paying an attorney. . . . I'd let him pay one more day. I told my wife he was going to have to pay someone." The behavior on the part of Searcy's attorney is certainly quite different from the ideal behavior described by the small claims court judges and by Gulliver. The attorney was unwilling to make any compromise or to even let Hodge explain his point of view. If Hodge had not been so sure that he was right, he may have

allowed Searcy's attorney to pressure him into dropping the case. There is an important issue here that goes beyond any single case. It is the issue of what degree of justice the parties are entitled to once they file a case in court, particularly in a court in which gross inequities exist between parties. When the parties leave the courtroom and go into the hall for private discussions, they have lost all the protection afforded them by the presence of an impartial third party.

The popular view in the anthropological literature is that people of equal rank and people in long-term, especially multiplex, relations prefer to settle their disputes by negotiation, conciliation, or mediation instead of adjudication. This may very well be true as evidenced by the relatively few cases of this nature filed in court. However, once people file a claim in small claims court, they have usually exhausted the possibilities for informal settlement. Usually there is no communication whatsoever between them between the time of filing and the date of the pretrial. By the time litigants file they have reached the point where they want a decision from the judge and no longer believe even talking to the other party would be beneficial. In the Maine small claims courts with a mediation option, McEwen and Maiman (1981) also found evidence contrary to the view that persons with long-term relationships prefer negotiation, conciliation, or mediation to adjudication. Litigants reporting a long-term past relationship were no more likely to choose mediation than those litigants without a long-term past relationship. Analysis of the case file sample from 1979 supports this view (Table 6.1) and also suggests another explanation for the circumstances in which litigants insist on a trial. Individual v. individual cases were those in which it was most likely litigants had known each other before the incident that brought them to court. Some were roommates; some, friends; and some, kin. These cases were far more likely to result in a trial than cases in

TABLE 6.1
RELATIONSHIP BETWEEN TRIAL
AND TYPE OF CASE

<u>Type of Case</u>	<u>Trial</u>		<u>Total</u>
	<u>Yes</u>	<u>No</u>	
Individual v. Business	47%	53%	19
Individual v. Individual	38%	62%	24
Landlord v. Tenant	30%	70%	10
Tenant v. Landlord	25%	75%	4
Business v. Business	16%	84%	32
Business v. Individual	6%	94%	179
Professional v. Individual	0%	100%	21

which businesses or profesionales were suing individuals. As Table 6.1 shows, cases in which individuals were suing businesses were also more likely to result in trial than cases in which businesses or professionals were suing individuals. Many of these persons, in contrast to persons suing individuals, had no prior relationship with the defendant. They may, however, have insisted on trial as a means of equalizing their chances against what they perceived to be a more powerful opponent. In other words, they may have viewed the court and the judge, in particular, as allies in a structurally unequal dispute.

In sum, it appears that there are two major processes occurring during small claims pretrials: (1) either the judge rubber stamps decisions already made by plaintiffs who frequently request conditional judgments, final judgments, or continuances or (2) the litigants are left to their own devices in discussions in the hallway. Very little conciliation or negotiation occurs during pretrial hearings. When these processes do occur, they are usually over the amount of the claim or the conditions of repayment and not over any of the broader issues in dispute despite the fact that the judges are instructed by the rules of the court to make an effort at conciliation before trial. Judges also view pretrials as the time to set forth what they consider the legal issues to be in particular cases and to make sure litigants know what they will need to prepare for trial. Such preparation rarely occurs. In most instances the hearings are so rushed that the judge gives no specific information unless the litigant asks a question. During pretrial hearings, the contested or complicated case is frequently lost in the mass of routine bill collection cases.

Pretrial hearings are not the appropriate setting for either conciliation or education. The speed of the hearings is one obviously important factor, but there are also others. It is instructive to look at Norwegian courts of conciliation, on which small claims courts originally were modeled. In contrast to small claims court, the Norwegian courts were relatively successful in peaceably resolving disputes (Grenstad 1918). These courts, however, varied in several crucial ways from small claims courts. First of all the social and cultural context was different. The Norwegian courts developed in a village society, whereas small claims courts were an urban phenomenon. The Norwegian courts were held in private and the conciliators, who were well known and respected members of the community, were bound to secrecy. Attorneys were strictly forbidden and whatever was said during conciliation could not be used in the regular court. The procedure used was to allow each side to tell his own story. According to Grenstad (1918), the judges attempted to reduce the differences between the parties, while at the same time, emphasizing the uncertainty and expensiveness of litigation. Small claims pre-trials, unlike Norwegian courts of conciliation, are extremely public, and the litigants cannot help feeling uncomfortable having to stand like criminal defendants in front of a judge who is obviously interested in moving cases along as fast as possible.

The judge in small claims court also has nothing to gain by having the parties effectively resolve their problems. In contrast third parties in many village and tribal societies have much to gain from effective resolution of interpersonal disputes. For example, Collier (1979) describes the process of mediation in Zinacantan, a Mexican township of monolingual Tzotzil speakers. In Zinacantan almost all the men are corn farmers, with production units

organized on the principle of patrilineal kinship. The lineage elders are the wealthiest men in the community and have a vested interest in preserving harmony among the kinsmen who in effect work for them. Collier argues that because disputes threaten both the processes of production and the kinship principles on which social obligations are built, the elders are eager to mediate any disputes that arise. The situation is vastly different in the United States. The judges do not even know the disputants. The judges do, however, have some interest in seeing that cases are resolved during pretrial: They will have to hear at a later date any cases that are unresolved. Beyond this, however, judges do not have any vested interest in the quality of the resolution, hence they pressure litigants to reach a quick agreement. The situation is different in cases involving attorneys. The judges not only usually personally know the attorneys, but, as pointed out in Chapter 5, it is also attorneys, not members of the public, who are largely responsible for keeping a judge in office. Thus the judges are part of the local community of attorneys in much the same way the Zinacantan mediators are part of the local production unit.

The Hearing

As far as the court is concerned, most cases filed in Leon County small claims court are resolved at the pretrial hearing stage of the process. However, in 13 percent of the cases filed, as revealed by analysis of the case file sample from 1979, a formal trial or hearing is held. These cases are each scheduled for a separate time, usually about two months after the pretrial hearing. The hearings in small claims court last from a half hour to a couple of days. Most hearings take about an hour. In most instances the same judge who presided at the pretrial hearing presides at the hearing.

The degree of formality during the hearing varies from case to case and from judge to judge. Three of the judges prefer to hold small claims hearings in the courtroom if it is available. When the courtroom is used, the judges usually wear their robes and take their usual position behind the bench. Their entrance may or may not be announced by the bailiff. Judge Ryan usually conducts hearings in his office where the litigants sit around the table in front of his desk. He does not wear his robe during these hearings. On only one occasion was Judge Ryan observed conducting a trial in the courtroom. Instead of sitting behind the bench, he took a seat at the table with the litigants. Most litigants interviewed liked having the hearing held privately in the judge's office; they felt more comfortable there than in the open courtroom. One litigant contrasted his feelings of comfort during the hearing in Judge Ryan's office with his nervousness during the pretrial in the courtroom: "There're all those people in the courtroom, it's personal. . . . It's hard to talk about [the case] in front of all those people. It'll freeze you up." Some of these types of feelings are probably mitigated during the hearings because the public section of the courtroom is usually empty. However, the courtroom setting itself with its clear markings of status differences is obviously more intimidating to the unrepresented litigant than is a judge's office. On the other hand, some litigants may need the symbols of the court to feel that their case is getting the attention it deserves. In one instance, a plaintiff revealed in an interview that he thought his case had been heard by a clerk instead of a judge because the hearing was held in an office instead of a courtroom and because the judge was not dressed in his robe.

Before the hearing actually begins, Judge Cain and Judge Faraday may ask the parties if they want to talk one more time before the trial. Litigants

usually say there is no point in talking, that they are ready for trial. In one observed instance (out of forty-two cases), the parties were able to resolve the case in this manner. The case involved \$193 in damages from a car accident. Both the plaintiff and the defendant were similar in many ways: they were both young, white, male college students; they were even dressed in similar t-shirts and slacks. They had been neighbors in an apartment complex when the accident occurred. The plaintiff claimed the defendant backed into his car. The defendant admitted hitting the plaintiff's car, but claimed the plaintiff had parked illegally. At the scheduled hearing time, the plaintiff along with his girlfriend, the defendant, and a deputy clerk were seated in Judge Cain's office. The judge asked if the disputants would like to talk the problem over again, adding "it is part of my job to try to get the parties together. . . . I believe people are more satisfied if they can resolve their own differences. If you are not able to settle your differences, I will do it for you; that's what I'm paid to do." The parties agreed to talk and the judge asked everyone to leave the room and to give the parties a few minutes alone. About five minutes later, one of the litigants opened the door and reported the case has been resolved. The defendant had agreed to pay \$130, instead of the originally requested \$193. This case between litigants who even dressed alike provides support for Black's (1976) view that people of equal rank are more likely to compromise than people of unequal rank, but it also must be remembered that these individuals were strangers before the incident that brought them to court. Hence, their case was not complicated by many personal issues that make resolution of a dispute by negotiation much more difficult even if the disputants are of equal rank. In these types of cases, litigants are likely to insist on a decision by the judge once the case has reached court.

At the hearings the judges' opening remarks are even shorter than those given at the pretrial hearings. Judge Ryan asks who is present and if there are any witnesses. If there are witnesses, he will swear them in and ask them to leave the room. He then reads the claim as set forth on the claim form. Next he swears in the plaintiff and asks him or her to "tell me your side" or to "tell me about this case." Judge Cain begins the hearing by briefly outlining the proceedings. He calls the parties forward in front of the bench and explains: "The plaintiff is the person who filed the suit. He will have the first chance to testify and then you [the defendant] may cross-examine. Then you [the defendant] will be called to testify. I may or may not be able to decide today." He sometimes adds, "I may ask questions. There are certain things I listen for." He then asks the parties to stand and swears them in. Afterwards, he calls the plaintiff to the witness stand and says, "Give me your name and tell me why you are suing."

Judge Russell's and Judge Faraday's opening remarks are similar to Judge Cain's. Like Judge Cain, they both outline for the parties the order in which they will speak. Judge Russell also usually initially asks the plaintiff not only why he or she filed the suit, but how he or she arrived at the amount of damages. Judge Faraday is very businesslike at small claims hearings. He enters the courtroom dressed in a suit without his robe and when the people in the courtroom start to stand, he tells them to be seated. In one case Revell v. Revell, he immediately began the proceedings with "We're here on a note. Have you exhausted all avenues to settlement?" After the attorney for the defendant replied, "Yes, sir," Judge Faraday turned to the plaintiff and said, "Mr. Smith, you filed the suit. It is your responsibility to prove and to provide evidence to convince me of the debt . . . to prove that you paid the note and that she

received the proceeds. The attorney for the defendant will have the opportunity to cross examine you, then the defendant will have a chance to testify. I may take it under advisement and rule at a later date."

During the hearings themselves, all the judges were interested in determining two things: whether the defendant was liable and whether the amount of damages claimed by the plaintiff was fair. The judges either ignored other issues raised by the litigants or directed the discussion back to the issues they perceived to be important. Through this process, the judges transformed the dispute in such a way that they were able to make a decision within the framework of their legal training. Mather and Yngvesson (1980-81) have termed this particular type of dispute transformation "narrowing." Fixing or circumscribing a framework in which the dispute is defined is, according to Mather and Yngvesson, a fundamental aspect of disputing that occurs in many of the world's societies. In some instances, it is the disputants themselves who argue about which definitions should apply to a dispute. As examples, Mather and Yngvesson cite such diverse phenomena as the Kpelle moot (Gibbs 1963), the public shouting matches of the Jale (Koch 1974), and the gossip networks of North Atlantic fishing villages (Yngvesson 1976). In the course of narrowing, complex issues may be translated into terms of a currency, whether it be money, pigs, land, or cattle (Mather and Yngvesson 1980-1981). As Collier wrote about disputes among a group of Indians in Mexico: "Zinacantecos, like many people, reduce . . . complex, subjective problems . . . to straightforward disagreements over something tangible, something that can be objectively measured and divided" (1973:169 quoted in Mather and Yngvesson

1980-1981:777). In small claims court, complex problems have been reduced to a sentence on a claim form and to a value less than \$1500. The judge in small claims court further transforms the dispute in terms of legally relevant issues.

The hearing in the Lewis v. Lewis case exemplifies how the small claims court judge reduces an extremely complex family dispute to terms with which he can deal comfortably. The judge began the hearing by asking the parties and the witnesses to identify themselves. Then, looking through the file, he said, "this is about \$500 in nursing care you paid." The plaintiff interrupted the judge with, "she was supposed to pay me." Before she could continue the judge swore her in and explained that she was to "tell us about what happened" and then the lawyer for the other side will have an opportunity to ask questions. The plaintiff then began a long and difficult-to-follow monologue about how she works as a nurse and about how her sister called and asked her to take care of Samuel so that he could get out of the VA hospital in Gainesville. She showed the judge a letter, which apparently stated that Samuel needed home nursing care before he could be released from the hospital. After several minutes, the judge interrupted Mrs. Lewis and the following conversation occurred between them:

Judge: When did you start taking care of him and for how many days?

Mrs. Lewis: From November 5, 1979, to November 20, 1979, when he went to TMH [Tallahassee Memorial Hospital] in a diabetic coma and died. . . . His baby sister came in and helped. . . . I did everything for him . . . cleaned up his bm, give him insulin shots . . .

Judge: Were you his only nurse?

Mrs. Lewis: Also his sister. They wouldn't give him from Gainesville unless someone cared for him.

Judge: How long did you care for him?

Mrs. Lewis: Eight hours a day.

Judge: Did they ever say they didn't want you there?

Mrs. Lewis: No.

Judge: Did they ever say they did. . . . Why are you suing this lady? Why didn't you sue his estate?

Mrs. Lewis: The estate is messed up [continued about "a lien or something"]

Judge: Why are you suing her? Because she's his wife?

Mrs. Lewis: That's the law.

Judge: How did you arrive at \$500?

Mrs. Lewis: That's what they pay for nursing care. . . . I did everything for him . . .

Judge: You were there 16 days, every day?

Mrs. Lewis: I didn't miss a day.

Judge: How much did you charge a day?

(Mrs. Lewis ignores his question and repeats all the things she did for Samuel.)

Judge: How much did you charge a day?

Mrs. Lewis: I cooked for Lenora . . .

Judge: It's not my job to argue about that. I want to know where you got the \$500?

Mrs. Lewis: . . . \$4.50 an hour.

Judge (checking calculations): You didn't charge enough. Did you decide \$500 was enough?

Mrs. Lewis: Yes.

Judge: Did you send a bill?

There was no response from Mrs. Lewis and the judge indicated with a hand motion that it was the attorney's turn to cross-examine her and then to present his case.

In the case of Abdul v. Clay the judge allowed the litigants to ramble about the issues they considered important, but in the end he ruled on the narrow issue before him as he did in the Lewis v. Lewis case. In the following dialogue Mr. Clay is attempting to explain to the judge why he did not pay his part of the utility bill:

Clay: I paid Mr. Abdul for three or four months. I paid the bills on time. . . . Mr. Abdul got a Caucasian girlfriend. I don't think she liked me. We began to have problems. One day I asked Mr. Abdul to clean the stove. He protested vehemently and said he was going to find a new roommate. It was close to the end of the month. . . . He moved the two beds together for conjugal purposes. I saw the handwriting on the wall and looked for another apartment. He moved another guy in. . . . I paid him all the money I owed him at the time and then this weekend a guy moved in and there was nowhere to sleep. I had to get a hotel room. . . . He slashed my tires, but they [the sheriff] said I couldn't do anything because I didn't have a witness. . . . I do admit owing the phone bill, but I had to spend \$40 for tires. I thought that made up for the phone bill. I paid everything else.

Abdul: Judge, the bills come the next month. . . . When he said he paid the bills, the bills came later. He didn't see them. He says I'm prejudiced. I'm not. I go to A and M [the local, predominantly black university].

Clay: There was also the time when he pulled a knife and said, "I'll kill you nigger." When I left I paid everything I owed him. During the month

another Iranian student moved in. I thought the bill should of been split three ways.

Abdul: In the middle of the month I told him he'd have to leave. He said OK.

He could have gone to live with his parents.

Judge: When did he leave? January 2?

Abdul: I'm not sure. I gave him time to find an apartment. He stayed four days after his rent was up. You say I slashed your tires. That has nothing to do with this case. So sue me. I got beat up. I have to file a personal injury suit.

Judge: Did you have words before you split up or was it just because you didn't like each other [half asking, half stating].

At this point the judge had obviously heard more than he wanted to hear and ended the trial with, "I will rule on this case and send you a copy." After the litigants left the judge took a large bottle of antacid tablets from his desk drawer and taking a couple of pills said, "you know what you take after a case like this." He then took his calculator and figured the amount Mr. Clay owed on the utility bill. As far as he was concerned Mr. Clay lived in the apartment during the time covered by the bill and was thus responsible for his half of the payment. Having tires slashed, being threatened with a knife, and being beat up were irrelevant to the judge as was the nature of the litigants' relationship in general.

Although all the judges are interested in the same narrow range of issues, they vary in their adherence to formal court rules and in their expectations of unrepresented litigants. Judge Faraday was observed to have the same expectations of laymen as he had of attorneys and to become easily irritated when their behavior did not conform to his expectations. For instance in Cody

Revell v. Susan Revell, Cody Revell was suing his ex-wife for a bank loan he had paid, but, for which, according to Cody, she had agreed to be responsible. A white man in his 30's dressed in a shirt and tie, he was noticeably nervous as he flipped through a folder of papers before the trial. After a few preliminary remarks, Judge Faraday called Mr. Revell to the witness stand:

Mr. Revell: I'd like to enter evidence . . .

Judge (interrupting): Do it at the proper time and in the proper way. . . . You give the defendant a chance to examine the evidence and then you present it to the court.

Mr. Revell: On June 2, 1978, I took out a loan for \$2500 to pay accumulated family debt and to pay down payment on furniture. . . . I have evidence [shows loan note to defendant's attorney]. The agreement was I would make payments on the \$2500 loan and Susan would pay on the \$1500 loan.

Judge [to defendant's attorney]: Any objections?

Attorney: Yes there was nothing in the divorce decree that said that . . .

Judge: Court will not admit. It has no bearing on the case.

Mr. Revell: We separated in August 1978 . . . Industrial National Bank agreed to loan for \$1500 . . .

Attorney: Objection. You can't vary terms [on a note]

Judge: He's not trying to alter. How's he trying to alter? You are anticipating an objection that hasn't arisen . . . go on with your testimony.

Mr. Revell: I agreed to leave her the house and the furniture and Susan agreed to pay on the note.

Attorney [interrupting]: We have note to the contrary.

Judge: The note states both are comakers. . . . [to Mr. Revell] What do you have that varies from the note. . . ? Mr. Revell the note speaks for

itself . . . Both are obligated to pay . . . agreement on the side has no bearing on the matter here today. Go on.

Mr. Revell is silent and noticeably flustered and the other side takes over.

Despite Judge Faraday's intimidating behavior toward Mr. Revell, the judge ruled in his favor. However, he only awarded Mr. Revell half of the amount he requested. The judge reasoned at the end of the hearing that "the nature of the liability is that both are comakers [on the loan] . . . the final payment will be split down the middle."

In contrast to Judge Faraday's behavior, Judge Ryan's behavior indicates a greater understanding of the unrepresented litigant's dilemma in small claims court. In one case an attorney become quite annoyed because an unrepresented litigant was making statements when he was supposed to be cross-examining his opponent. The attorney interrupted the litigant with a plea to the judge, "if we are going to have testimony, can we have it from the stand so we can cross-examine?" The judge replied in sympathy with the litigant, "not being a lawyer, he's entitled to some mistakes." Then directing his attention to the litigant, he said, "try to ask questions and then you will have your turn." Even Judge Ryan, however, expects people to have some understanding of the law and of the way the courts operate. In the case of Peter Lombardi v. Mira Anderson, Judge Ryan was shocked to find almost total ignorance of the law and the courts on the part of one of the litigants. Peter Lombardi is an ambitious young attorney; Mira Anderson is the middle-aged ex-wife of a successful physician. At the trial she was dressed in an expensive knit suit and high black heels. Her hair was short and bleached and she wore a lot of

make-up. Several instances of nonstandard English usage indicated that although she had married well, she was probably not well educated. Mr. Lombardi was suing Mrs. Anderson for \$765 in legal fees.

At the trial Mr. Lombardi explained that Mrs. Anderson came to him after she and Dr. Anderson had been divorced. The divorce decree had failed to specify who would be responsible for various debts. There was a bill for \$2,000 from an exclusive ladies apparel shop. The account had been in Dr. Anderson's name and Mrs. Anderson's contention was that he should be responsible for paying the bill. Based on this reasoning, Mrs. Anderson, represented by Mr. Lombardi, sued Dr. Anderson. Meanwhile, Dr. Anderson employed a lawyer and contended that even though the account was in his name, the store accepted her signature and she received all the benefits (i.e., dresses and other items). Thus, it was really her debt. When Mrs. Anderson went to Mr. Lombardi, she was still working for Dr. Anderson in his office. Mr. Lombardi warned her that if she sued her ex-husband he might fire her, but, in Mr. Lombardi's words, "she was adamant." Dr. Anderson did in fact fire his ex-wife when she sued him.

Mrs. Anderson returned to Mr. Lombardi because she felt her alimony should be increased. Her alimony was based on her income and now she had no income. Mr. Lombardi called Dr. Anderson in an effort to resolve the problem, but Dr. Anderson refused to rehire Mrs. Anderson. Again Mrs. Anderson was adamant about suing her ex-husband. Dr. Anderson's attorney took a deposition from Mrs. Anderson, and, according to Mr. Lombardi, "to make a long story short in my opinion she was demolished in the deposition. She hadn't been completely honest with me about her assets. She had furs, jewelry" Mr. Lombardi told her to reconsider the case. Although he tried to contact her, he never saw her again. He wrote her a letter firing himself and the judge let him

resign from the case. Mr. Lombardi had, however, worked 36 hours on the two cases and on a third case involving Mrs. Anderson's teenage son. The balance due on her account was \$765 and Mr. Lombardi thought he should be paid: "I told her the case was going to be expensive and that I didn't know whether it was worth a \$2,000 bill . . . she was dissatisfied because of the outcome."

The judge then turned to Mrs. Anderson and said, "OK cross-examine, Miss Anderson." The following dialogue occurred as Mrs. Anderson attempted to explain why she had not paid Mr. Lombardi:

Mrs. Anderson: I don't understand the law. What is it you're asking me to do. I just want to tell my side.

Judge: But you didn't raise your hand [when he had asked at the beginning of hearing who would testify] . Now you want to testify.

Mrs. Anderson: I don't understand.

Judge (harshly): You don't understand the words "testify," "cross-examine."

(Judge asks her to raise her hand and swears her in.)

Mrs. Anderson: What do you mean by those questions? I just want to tell my side. I've never heard those questions before. The main thing is the bill . . . was with what I had to pay. I was not told about the big interest. When I went to sell my house. There was an attachment on it . . . said bill was \$3600. I didn't know anything about what I was supposed to do. I had gone to give deposition. . . . Mr. Lombardi didn't tell me what they were going to ask. I don't lie. I didn't know what was going on until I went to sell the house. . . . I got a letter saying he couldn't represent me anymore. . . . He should of told me about all the extra money. I had to pay

another attorney. Mr. Lombardi should have to pay the other attorney for leaving me in this mess . . . I didn't know nothing until the day I sold the house. The bill went on up and up.

The judge took the case under advisement and the hearing was over. In his decision, the judge acknowledged Mrs. Anderson's ignorance, but ruled in Mr. Lombardi's favor:

From the evidence before the court, the court finds plaintiff performed 36 hours of legal work in three cases involving . . . bill, divorce and matter with son of the defendant. Mrs. Anderson displays total lack of knowledge as to that matter, nevertheless this court is satisfied she had competent advice.

Although the judges vary in the degree they adhere to formal rules and procedure, all the judges were observed to be more likely to follow formal rules when attorneys were present. For example, the court will accept written estimates of damages and affidavits from experts so long as the opposing litigant does not protest that such evidence is unacceptable because the person is not there to be cross-examined. Most litigants are unaware that written estimates are unacceptable and thus it is only attorneys who raise this issue. This situation occurred in several of the detailed case studies, and the losers were extremely bitter. One of these cases was Walters v. Charles. According to Mrs. Walters, she was backing her car out of a space in front of her daughter's apartment when Mr. Charles sped around the corner and hit her car. She and her husband sued Charles for \$625 worth of damage to her car. They won the first hearing by default, but then Charles hired a prominent local attorney, who although not a small claims court regular was well known to the judge and the deputy clerk. The attorney filed a motion to have the default set aside. A hearing was held on his motion, and the judge set aside the default. A final hearing was then scheduled for the case.

During the hearing, Mrs. Walters spent about 30 minutes on the witness stand explaining the accident and answering questions posed by her husband, the judge, and the defendant's attorney. After her husband was finished with the last round of questions, the defendant's attorney, pacing across the front of the courtroom, said: "If they are resting their case, I make a motion for a directed verdict in favor of the defendant." The attorney gave two reasons for his request. The first reason was that the plaintiff failed to show negligence on the part of Mr. Charles; the second was that the plaintiff had failed to subpoena a damage estimator to court. At this point Mr. Walters interrupted and the following dialogue ensued:

Mr. Walters (meekly): May I say something? He said I had a month. I only had two weeks. I asked to put it off. I think it's unfair to subpoena a man to court. I have letters signed by companies to prove damages and estimates from the accident. I just didn't know how to present. I guess I'm just not smart enough.

(Judge motions to attorney)

Attorney: I'm in a difficult position. I don't have a chance to ask questions, to see if it is old damage.

Mr. Walters: I have the car.

Judge (cutting him off): Mr. Walters.

Attorney: I distinctly told him to have people here. I don't think I should have to take hearsay evidence. I object.

Judge (to Mr. Walters): Do you remember me telling you [at the motion hearing to set aside the default] to have people here?

Mr. Walters: I went to get Mr. Rodgers, but he's no longer with the company. I had it [the estimate] signed and notarized. I don't know how to do it any better.

Judge: That's why I advised you, you needed to get the repairman here. If I put the shoe on the other foot, I'd do the same for you. I do recall telling you it would be necessary to have the person here and that writing wouldn't do.

Mr. Walters: I thought it would be like a deposition.

Judge: But it is not sufficient. They are entitled to question [the repairman]. I will grant the motion because you have to prove up both liability and damages. If you proved liability, you have not proved damages because you don't have live testimony.

Mr. Walters (incredulous): We lost because of the estimates. Do we have a right to file again?

Judge: No sir. Finding is for defendant. You do have a right to appeal to circuit court. I know it's frustrating. It's frustrating to a lot of people.

After the hearing was over, Judge Cain came over to where I was sitting and apologized for the outcome, saying that he had to do it, that he was bound to follow the rules. I was confused and said I had observed cases in which the court had accepted written estimates of damages in similar cases. He said that, yes, he had done it and would do it again if there were no objections from the other side. He repeated that he would have done the same thing for the other side. I asked how he would have ruled on liability and he said he did not know because he had not heard the other side.

In an interview about a month later, Mrs. Walters was still quite upset about the outcome of the case. She felt the court's purpose should be justice

and that this was not accomplished because of the maneuvering of the other side's attorney:

If they [the court] want justice, it's not done. I thought the court was set up for justice. It's not. It makes me want to cry, not because of the car, because of the person. He got an attorney because he didn't have a case and we lost on a technicality. We wanted justice... we felt we could do it ourselves. We knew that he was the guilty one. There needs to be something for the layman...

She went on to explain that her husband restores houses for a living. "A lawyer doesn't know how to restore a house," she said, "[and] we don't know how to represent ourselves."

Even when neither side is represented some people have more difficulty than others presenting their cases in a way understandable and acceptable to the court. Many unrepresented litigants fail to distinguish between "principle" or ethics and law. For example, in the case of Home Lighting v. Massadourian, in which the owner of Home Lighting refused to accept return of a lighting fixture because more than 24 hours had elapsed, even the judge implied in a private conversation that Mr. Marin was being unreasonable: "He got a whole lot more than \$30 worth of ill will." The judge, however, felt compelled to rule in Mr. Marin's favor because he was within his rights legally.

In another case, Miner v. Melton, Linda Miner was suing Beatrice Melton for damages from a car accident. The accident occurred on a busy street during a heavy afternoon rainstorm. Beatrice Melton's car ran into the back of Linda Miner's car. After the accident Linda Miner called the police and Beatrice Melton called her husband. Mrs. Melton's husband arrived first and helped Miss Miner open her trunk, which was stuck as a result of the accident, and get her car started. The police arrived, but did not charge anyone for the accident, apparently because of the hazardous weather conditions. For several

months, Miss Miner tried to get Mrs. Melton's insurance company to pay for the damage to her car, but was repeatedly told by a company representative that Mrs. Melton did not have an insurance policy with their company. Finally she called the Office of the Insurance Commissioner and was told that the only thing she could do was to file a suit in small claims court. At the hearing, Mr. Melton was angry that Miss Miner had filled a suit after he had helped her: "I should of just left you there, but I guess I'm not that nasty." He also felt the \$300 claimed for damages was too high and that the damage only amounted to \$30 or \$40. The Meltons were also confused because no one had been charged with the accident. Judge Cain explained to them the difference between a criminal and civil suit and that they were still liable even though they had not been charged. In a later interview, Miss Miner aptly summed up the Meltons' position: "They were talking principle, not law."

Some litigants' communication style appears to hinder their chances in small claims court.¹ In particular, several features found in the speech patterns of some blacks appear to be misunderstood by the judges. Some of these features have been described in school situations in which black children were interviewed by white adults (Labov 1972). According to Labov, "the child is in an asymmetrical situation where anything he says can literally be held against him. He has learned a number of devices to avoid saying anything in this situation, and he works very hard to achieve this end (1972:185)." Similarly Vera John (1971) found that teachers silenced children in their classrooms by withholding attention from children whose speech patterns offended their ears. In the study reported by Labov the child appeared monosyllabic, ignorant, bumbling, and inept regardless of the topic raised by the interviewer. Even a neutral topic like television shows drew this response. Use of eye contact also

varies by race. The standard use by whites is to look at the speaker and to look away when speaking; the characteristic pattern is the reverse for blacks -- they look away when spoken to and look when speaking (Labov 1972). Further problems result because the structure of English spoken by many blacks is superficially similar to but fundamentally different from that spoken by whites (Dillard 1972). The greatest difference between these forms of English is in verb tense. For example, in Black English, the ending "-s" to indicate third person singular present is not normally used. Consequently the verb can be interpreted as being past or present. Further complications exist. As pointed out by Dillard, "in Standard English every verb in a sequence (in a sentence or a related series of sentences) must be marked as either present or past, in Black English only one of the verbs needs to be marked -- although more than one may be so marked" (1972: 42). In Black English verbs must be marked according to whether they indicate ongoing or intermittent action, but need not be marked according to time of an action's occurrence (Dillard 1972). Although these features evolved as the result of the caste system in American society which separated blacks from mainstream white society, they are not adaptive in court. The judges, socialized in the white middle class subculture, think people who do not look at them when they are speaking are being disrespectful and that people who do not answer their questions are lying or at least trying to hide something. The different structure of Black English creates even more serious, and much harder to detect, problems. Establishing the sequence with which actions have occurred is such an important part of the American legal system that the potential for misunderstanding and confusion as the result of

use of a language that marks tense differently from standard English is enormous. Furthermore, there is also a tradition of "fancy talk" among black males, in which how something is said is more important than the details of what is said, with expression taking precedence over exactness (Dillard 1972; Kochman 1970). Again the consequence is that judges, when confused, will tend to believe that the speaker of nonstandard English is not being completely honest.

Lieberman (1981) has detailed similar communication problems in Australian courts, where, as in all courts, successful interaction requires facility with procedures that are not normally found in everyday interaction. Like American blacks, Australian Aborigines have developed strategies for negotiating their interaction with Europeans safely and successfully, but again these features are unsuitable for making a competent defense in court. Aborigines' characteristic communication style is to preserve harmony within the group. Thus individuals do not assert their points of view too strongly and they make a concerted effort to avoid contradicting one another. Like American blacks, they also avoid looking at others directly. In the courtroom, Lieberman found that Aborigines agree with Anglo-Australian attorneys and magistrates even when they do not understand what they are agreeing to, a style he terms "gratuitous concurrence." They think by agreeing that they will please the court and will be released more quickly. Their fundamental goal is to satisfy the questioner instead of to answer truthfully. A variant of this style is to remain silent or to mumble in reply to questions from attorneys or the judge. Common courtroom procedures are also confusing to Aborigines, including holding the Bible when being sworn in, standing when required, leaving the witness box at the completion of testimony, and speaking only in response to questions. They have difficulty finding the correct place within courtroom

procedures to voice their comments. "Not only is there a problem with finding the proper rules of turn-taking when giving testimony, but evident here is also a disregard for the piecemeal manner in which courts collect facts of a case. The Aboriginal witnesses move quickly to the global sense of the endeavor, bypassing the detail important for European jurisprudence" (Lieberman 1981:253).

The following examples taken from the Leon County small claims court suggests that many of the same kinds of patterns that Lieberman found in Australian courts may occur in courts in the United States. A closer examination of courtroom communication patterns, based on videotaping or at least on tape recording, is obviously necessary to determine exactly where and how communication goes awry, but this preliminary study of a single small claims court indicates the communication styles of some members of society puts them at a disadvantage in court.

In this case, Mr. Vine was suing Rev. Wood for failing to complete a roofing job on one of Mr. Vine's rental houses. Both Mr. Vine and Rev. Wood were middle-aged black men. Rev. Wood was represented by a white male attorney. The hearing was held before Judge Russell. During the hearing the following dialogue occurred between Rev. Wood and his attorney:

Attorney: State your name, Franklin, and your occupation.

Rev. Wood: Franklin Wood, hog farmer and contractor.

Attorney: How long have you been in business?

Rev. Wood: Three years.

Attorney: Are you experienced putting on roofs?

Rev. Wood: Yes, I've built a lot of buildings.

Attorney: When was the first time you talked to Mr. Vine?

Rev. Wood: I went by the barber shop [Vine's place of business]. He said he had a house that needed a roof. When I got there the lady of the house was in bed. She said you should of been here a long time ago . . . said it was leaking [and] Lord I hope you'll get someone to fix it. I called the barber shop. He said he was going to fix it. He didn't say anything about the outside, just inside

Attorney [interrupting]: Tell us what you found in the bathroom?

Rev. Wood: The ceiling was falling down. I saw a hole . . . said they had to keep fire going all the time to stay warm . . . when I came back he said he wanted the shed taken down. He said, "I want you to take down that shack." We moved all that stuff

Attorney [interrupting]: Did you have any helpers?

Rev. Wood: I said to Mr. Vine I needed a crowbar. Someone came by. They wanted to buy it. I asked him if he wanted to sell it. He said no . . . I started to work on the house.

Attorney: So you worked for a week. When did you talk to Mr. Vine about money?

Rev. Wood: The second week.

Attorney: What did he say?

Rev. Wood: . . . I don't remember what he said. I got the shingles off. I put up 10 rolls of felt . . . pulled up and stacked them . . . then I got to cut some 1 by 6's, put the shingles back. Where the house came together was a drop. I had to run felt across. When I went to Mr. Vine for money, he said he wasn't going to pay. He wasn't going to give any more money. I said I can't do no more

After a few comments from Mr. Vine, the judge began questioning Rev. Wood.

Judge: Rev. Wood you said you didn't talk about money. Are you telling me you would start a job without giving a price?

Rev. Wood: I don't know.

Judge: You didn't estimate? You didn't give him any figure?

Rev. Wood: I said I didn't know.

Mr. Vine: Judge, May I have a word?

Judge: Just a minute.

Judge: How did you get the \$600?

Rev. Wood: After I started he asked me how much the balance would be. . . . I started to do one thing, then two more. I didn't know about the hole. Concrete was \$40

Throughout the dialogue the attorney attempted to guide Rev. Wood back to what he considered relevant issues. But Wood, like the aborigines described by Liberman, wanted to present larger issues. Wood considered it important to let the judge know about the condition of the house with remarks such as "when I got there the lady of the house was in bed. She said you should have been here long time ago. . . . Lord, I hope you 'all get someone to fix it. . . . The ceiling was falling down. . . . They had to keep fire going all the time to stay warm." The judge, however, was not interested in these issues and instead questioned Wood about the amount of money he charged for the job. Wood responded with a bumbling "I don't know" in much the same way school children in the Labov study replied to white interviewers.

In a private discussion with the judge after the hearing, Judge Russell said, "I didn't like it that he wouldn't answer my questions." I had also noticed

during my interviews with some blacks that I would ask what I thought was a simple, straightforward question (such as "did you have to pay court costs" or "how much time did you spend going to court?") and I would receive the same two types of answers that Rev. Wood gave in response to questions from the attorney and the judge: either a seemingly irrelevant rambling monologue or a curt "I don't know." Judge Russell was aware of this pattern, saying that he observed it all the time in court. He said, "blacks are afraid of you. They're afraid you'll pin them down, that you'll get them in a box and then if they say something wrong, they'll be in trouble." Even though Judge Russell is sensitive to ethnic variations in communication styles, he still considers those who exhibit this style to be lying or at least to be hiding something.

In another case, in which a young black woman was suing a coworker at a local discount store for money she had lent her, the judge was so confused that he repeatedly interrupted the plaintiff to ask her to clarify the time of the events she was describing. The plaintiff was also very hard for me to understand, and as a result my notes are incomplete but the following excerpt from the hearing gives some indication of the problem.

Judge: Tell me when you lent the money and under what circumstances?

Plaintiff: I lent the money on May 8, 1979. We had breakfast together. We were friends. She was crying. She was saying "me and Larry are fighting." She wanted to leave him but she needed money. . . . She said she would give the money back as soon as she got her vacation pay

Judge [interrupting]: Where do you work?

Plaintiff: [Discount Store] on Thomasville Road. She hadn't moved. They got back together. . . . She didn't bring the money back [she rambles about Larry, timeframe very unclear].

Judge [interrupting]: What?

Plaintiff: I offered to let her pay half. Pat said no she'd wait and pay everything when she got vacation pay, but then something came up and Pat said "Larry made me mad and I'm going to leave . . ."

Judge (interrupting): Are we still in May?

Plaintiff: Yes.

Not only was the time sequence confusing to the judge, but the plaintiff, like Rev. Wood in the previous case, further confused matters for the judge by attempting to present the global sense of the incident. In this case, the plaintiff's communication style was not detrimental as far as her chances of winning were concerned since the defendant had not appeared for the hearing. As a result, she won the case by default.

Another communication style that also appears to decrease an individual's chances of winning in small claims court is what Labov (1972) terms the "elaborated style." This style is characteristic of some educated persons and consists of verbiage and liberal use of "learned" words such as "science" and "culture." In the elaborated style every opinion is qualified and requalified and often words take the place of thought. A particular type of elaborated style was found in small claims court: the style of the unrepresented layman attempting to act like an attorney, a style that only males were observed to use.

One such person was described by Judge Russell. He was suing a local air conditioner installer because he claimed the unit was improperly installed. The plaintiff, Mr. Tolly, came to court with a briefcase full of air conditioning manuals and other materials. He even had tape recordings of the noise the air conditioner makes. Mr. Tolly called another local air conditioning man as a

witness, but the witness provided no support for Mr. Tolly's case; instead he said everything was all right with the way the air conditioner had been installed. Then Mr. Tolly introduced as evidence letters from the air conditioner company's representative. Even these letters failed to support Mr. Tolly's case. In the letters, the representative repeatedly wrote, "Mr. Tolly has very sensitive ears." During the hearing, according to Judge Russell, Mr. Tolly discussed every little dissatisfaction at great length, including those that had been corrected. He even wanted them to move the unit from the hall closet to underneath the house, although he had contracted with the company to put the air conditioner in the closet, against their advice and the advice of the manual. Mr. Tolly wanted the judge to come to his house and look at and listen to the air conditioner. Judge Russell agreed to do so, but told Mr. Tolly he was not going to make the defendant move it from the closet. Mr. Tolly did not give up easily, "Even in the car he asked me if I'd make them move it," said the judge. According to the judge his case was muddled: "One time he'd go by the [air conditioning] manual and the next time he wouldn't." Mr. Tolly persisted in his discussion of the air conditioner's noise, which was apparently the simple consequence of his request that the unit be placed in the closet instead of underneath the house. He had bought a noise meter and told the judge when the air conditioner was on the noise meter registered a certain number of decibels. The judge responded that he didn't know what such a measurement meant, and Mr. Tolly replied, "it was as loud as a tractor factory." The judge was apparently very patient with Mr. Tolly, but he did not rule in his favor. Another judge may not have been so sympathetic. Judge Russell believed Mr. Tolly had blown the case out of proportion and had in fact become obsessed with it: "Mr. Tolly told me he was up until 2:30 . . . people will got to all lengths when they

become obsessed with these cases," said the judge. By his remarks, the judge indicated that this kind of obsession was not appropriate behavior in the court. Although Mr. Tolly had attempted to act like a lawyer by calling witnesses and by bringing a briefcase full of papers with him to court, he failed in his efforts. For instance, a lawyer would never have called a witness who obviously supported the other side's case. Likewise, an attorney would not have continued to badger a judge after the judge had made a decision on a particular issue. It seems that Mr. Tolly was more interested in using the court as a forum to play lawyer and to act important than in using it to receive redress from a legitimate wrong.

In the case of Walters v. Charles, Mr. Walters behaved in a way similar to Mr. Tolly insofar as he attempted to impress the court by acting like a lawyer and by attempting to introduce evidence such as a map of the apartment complex where the accident occurred and the defendant's driving record, both of which were considered irrelevant by the judge. Mr. Walters lost the case because he forgot one thing a lawyer would probably never forget -- to subpoena a witness. After the hearing was over, the judge summed up the case in a private conversation: "He wanted to handle it [for his wife who had the accident and his daughter outside of whose apartment the accident occurred]. They went to daddy and he blew it. I remember distinctly telling him to bring a repair man during the motion hearing to set aside the default."

Use of attorneys may mitigate some of the negative effects of the communication styles described above. Although attorneys do represent an additional expense, they also serve as a kind of culture broker between the judge and the public by translating the nonlawyer's grievances into legal terms. Lawyers also know what evidence is relevant and how to present it to the court.

The judge and the lawyer, as members of the same profession, share a language and a body of knowledge unknown to the unrepresented party. Attorneys may also help litigants to see the disparity between litigants' conceptions of justice and the law. For example, in Walters v. Charles, Mr. and Mrs. Walters went immediately to see a lawyer after losing their case. The attorney told them they did not have a chance to win their case on appeal, apparently because they had signed a form from the defendant's lawyer without understanding it. "We had signed away our rights," according to Mr. Walters. The attorney also discouraged the Walters by telling them it would cost them a lot of money to pursue the case. Attorneys also function to protect the individual by calling the court's attention to specific aspects of law, of which the individual may not even be aware. Klein (1971) felt this function was crucial in consumer credit cases, which represent a large percentage of small claims cases.

Analysis of the 291 cases from 1979 revealed that it is not necessary to have an attorney to win (i.e., receive a judgement) in the Leon County small claims court (Table 6.2): 25 percent of all plaintiffs who were represented won, and 25 percent of all plaintiffs who were not represented won. There were, however, some differences between represented and unrepresented plaintiffs. Thirty-four percent of represented plaintiffs won by default in contrast to 25 percent of unrepresented plaintiffs. Defendants may have been intimidated into defaulting by the presence of an attorney for the plaintiff. As expected based on courtroom observation, represented plaintiffs were also more likely than unrepresented plaintiffs to have cases continued and less likely to have failure of service of process.

Attorney representation did appear to increase the defendant's chances (Table 6.2): 15 percent of all represented defendants received a favorable

TABLE 6.2
RELATIONSHIP BETWEEN ATTORNEY REPRESENTATION AND OUTCOME

	Attorney for Plaintiff			Attorney for Defendant		
	Number	Percent	No Number Percent	Yes Number Percent	No Number Percent	
Plaintiff	26	25.2	45	25.6	3	15.0
Plaintiff by Default	35	34.0	44	25.0	1	5.0
Defendant	1	1.0	4	2.3	3	15.0
Dismissed	19	18.4	40	22.7	8	40.0
Continued	12	11.7	9	5.1	3	15.0
No Service of Process	10	9.7	28	15.9	1	5.0
Other	0	0	6	3.4	1	5.0
Total	103	100.0	176	100.0	20	100.0
					263	100.0

Chi square = 14.909
Significance = .2464
Cramer's V = .16173

Chi square = 38.7812
Significance = .0001
Cramer's V = .26084

decision, whereas only 0.8 percent of all unrepresented litigants did. Forty percent of all represented defendants had their cases dismissed in comparison with 20 percent of unrepresented defendants. The threat of attorney representation may have caused some plaintiffs to dismiss their cases.

The relationship between type of litigant (i.e., business or individual) and outcome was also examined. Individuals fared almost as well as businesses when plaintiffs, but not nearly as well as businesses when defendants. Eighty percent of the defendants who won were businesses although less than 20 percent of all defendants were businesses. It appears that plaintiffs do well in Leon County small claims court regardless of whether they are a business or whether they are represented by an attorney. In contrast, the chances of the defendant appear to be increased when the defendant is a business rather than an individual and when the defendant is represented by an attorney.

Observation of court hearings, however, suggests that unrepresented individuals only win (i.e., receive a judgment) when they are well prepared, particularly if the other side is a businessman or represented by an attorney. An individual may lose not because he does not have a case, but because he is unknowledgeable about the requirements to present and prove a case in a court of law. As has been seen, unrepresented litigants frequently fail to subpoena witnesses or to bring relevant papers. They also frequently name the wrong person in the suit.

The Decision

The judges all use the same basic principles to decide cases in small claims court. The most common principle is that the burden of proof for both liability and amount of damages is on the plaintiff. If the plaintiff does not "carry" this burden, the judge rules for the defendant. When the only evidence

in a case is contradictory testimony, the judges usually rule for the defendant. In Jones v. Meeks, Ms. Jones, a large unattractive black woman, was suing Mr. Meeks, a young black man, for rent. During the hearing Mrs. Jones and Mr. Meeks started arguing. The judge interrupted with, "I'm not going to get into an argument. . . . He says he was there for two days. She says for two weeks. He says he didn't contract to stay for two weeks. One remembers the way it was, the other doesn't." While the plaintiff and the defendant were still arguing, the judge ended the hearing with "Okay. I'll let you know." After the litigants left, the judge said that someone was lying, the burden of proof was on the plaintiff and she had not convinced him she was not lying, so he ruled for the defendant.

Judge Ryan was never observed to deliver or to explain his decision at the conclusion of a hearing. As he said, he likes to give the parties a chance to "cool off" before they receive his decision. Judge Ryan, however, was observed on several occasions to explain the basis on which he would reach a decision. In Lewis v. Lewis, he concluded the hearing with "The amount earned is reasonable. The question is the wife did not request nursing care. Is she liable?" The lawyer for the defendant and the judge discussed the legal issue and decided that whether the wife requested nursing care was not an issue. Meanwhile, the plaintiff was arguing with the defendant. She stopped arguing just long enough to interrupt the judge with, "Don't you think Miss Athena should of come in?" The judge replied with, "You should have subpoenaed her," although in his discussion with the defendant's attorney he had just said that Athena's presence would not have made any difference in his decision. The issue, as the judge saw it, was "is a wife liable for her husband's debts?" Whether the defendant had asked Athena to ask the plaintiff for her services was not an issue. The judge told the litigants he would have to study the question and would let them know.

The judge went into his office and after about a half-hour reappeared. Before the next hearing had begun, he said he was going to rule for the defendant because under Florida law the wife is not responsible for the husband's funeral expenses. He said he was going to extend this to cover the husband's final illness.

In another case, Judge Ryan had a discussion of the legal issues as they were presented by two unrepresented litigants. The behavior of these litigants differed from the "acting-like-a-lawyer" behavior of Mr. Tolly and Mr. Walters described earlier. The litigants in this case, unlike the two previous litigants, were coherent and logical in their presentations. Reba Snow was suing Brian Byron for the cost of a guitar he had sold her. Miss Snow, a black college student, began her testimony with "first of all he represented himself to me as a guitar dealer." She walks over to the judge and shows him copies of the defendant's newspaper advertisements and Mr. Byron's business card. The judge, unsure of why Miss Snow was presenting these items, said, "What difference does this make?" Miss Snow replied, "because if he is a dealer he has the responsibility to return my money." The judge, still not understanding her line of reasoning, asked "why?" Miss Snow explained, "I looked it up in the Florida Statutes. It said he should return my money if the guitar was returned within seven days." The judge asked her for the statute number, and she handed him a copy of the law. At this point, Brian Byron raised the legal principle "buyer beware:" "I haven't researched the law as well as Reba but there's a clause 'buyer beware.' It simply means you can look at and examine the product, but when you leave, the seller has no other obligation." The judge summed up the views of the two sides and explained how he was going to reach his decision: "The issue as I understand it is you're [the defendant] right unless there is a

specific warranty. There is no warranty for specific defects. The statute does say a dealer must give a refund if requested within seven days unless you post a sign saying there will be no refunds. This is part of consumer legislation. It allows buyers' remorse to operate. . . . If I reach the conclusion you are a dealer, she is entitled to a refund." In his decision mailed a week later, the judge did in fact decide Mr. Byron was a dealer and thus he ruled for the plaintiff.

Judge Cain frequently goes a step further than Judge Ryan and announces and explains his decision at the end of the hearing. Once he has made his decision, he will stop the hearing. For example, in Pappas v. Auto Works, Mr. Pappas was trying to enhance his credibility by telling the judge that he was a member of his church board. The judge gently interrupted with, "I don't consider either side to be telling lies, but I am going to have to find against you. To find for you, you would have had to show that his shop was negligent. Testimony [by witnesses for defendant] showed these types of tops rip . . . the fibers wear out. I don't question your honor . . . condition of the top caused it, not Mr. Johnson's shop. It wore out like a pair of shoes, okay?" The judge's "okay?" was not, however, a signal for Pappas to question the judge's decision, but it was a signal that the hearing was over. Pappas responded appropriately by shrugging his shoulders and sitting silently. In another case, the Miner v. Melton rainstorm auto accident case, Judge Cain explained the difference between civil and criminal cases: "Sounds like there was some confusion when the officer didn't charge anyone. In traffic court, you have a different type of case; you have to prove criminal charges beyond a reasonable doubt. Looking at the civil side, you ran into the back of her [Miner's] car. The rain may have been a contributing factor, but it appeared to me that her brake lights were on. I believe you're at fault. I don't believe the damages were over \$200. I

estimate the paint was \$18, repair \$80. I will give you a judgment of \$98 rather than \$221, okay?" In both of these cases, the losers were unhappy with the outcome, but at least they knew and understood why they had lost.

Judge Russell does not explain how he will reach his decision or announce his decision in court. He likes to study the file after the hearing to make sure he has not missed anything. In his written judgment, he does, however, frequently outline how and why he reached his decision. For example, Judge Russell's final judgment in Lloyd and Rose Cole V. Brian White d/b/a/ White's TV Service was three typewritten pages long and set forth his findings in a numbered list, summarized and paraphrased below:

1. Plaintiffs delivered 19" TV to defendant on August 11, 1980, to be repaired.
2. TV was repaired on August 21, 1980, and defendant tried to call the plaintiff twice, but no answer.
3. The plaintiffs had financial problems and could not pick up TV.
4. Defendant's business was burglarized on November 14, 1980, and the TV was stolen.
5. Plaintiffs came by three or four days later and were advised TV had been stolen.
6. Plaintiffs believe they went to pick up the TV before November 15, 1980.
7. Greater weight of evidence reveals plaintiffs went to pick up after November 15, 1980.
8. Defendant secured his building. A brick was thrown through the window.
9. Plaintiffs testified that they were not saying defendant was negligent.
10. "Situation here was a bailment for mutual benefit, one in which parties contemplated some price or compensation in return for benefits flowing from fact of bailment . . . as a general rule of bailee (defendant) is not liable in absense of negligence or violation of his special contract, for loss in respect of the thing bailed."
11. A bailee is not an insurer to the bailor for loss of property.

12. Test of liability is degree of care toward goods that a responsible prudent person would bestow on his own goods.
13. Evidence and testimony reveal defendant was not negligent. Therefore the court finds for the defendant and the plaintiffs shall take nothing under this cause.

For many litigants, feelings of bitterness and anger do not end with the court's decision. Mr. Massadourian, the man who stopped payment on his check to Home Lighting because the owner would not accept return of a lighting fixture, said, "I really felt I would get justice from the court. I was shocked at the decision." Mr. Massadourian is now informally attempting to get even with Mr. Marin, the owner of Home Lighting: "I bet he will go out of business. I tell everyone I see about him. [I tell] builders and individuals. I even told the French club we belong to." His wife added, "I was trying on a dress in Lerner's and we told the people there about him." Mr. and Mrs. Walters were also quite upset after their experience in small claims court. As already described, immediately following the hearing, they went to a lawyer about filing an appeal, but the lawyer persuaded them not to pursue the case. In response to the question "would you use the court again?" Mrs. Walters replied, "No, I doubt it. I don't think it's any use. I just feel sad that the guilty one was set free. . . . If there had been any way, we would of pursued it. We can do nothing now. There's nothing we can do."

Like the Walters, most people feel there is nothing they can do after a decision has been reached by the court. Commonly, people say such things as "we're not going to fool with it" or "it's cost us enough already." A few people do continue to pursue the case, although for most people, small claims court is the "end of the line." International did pursue the conflict with Mr. Norris by filing criminal charges against him for the bad check, and Mr. McKay continued

his complaint against the employment agency by writing letters to elected officials. Linda Miner's mother took over the case for her and continually called the defendant in an effort to collect the judgment for her daughter. In only one instance did litigants plan on continuing their relationship after small claims court. Elizabeth Dewey planned to continue to do business with Don Hsu's, one of the codefendants in the suit she filed. She believes she will make enough money in her future work with Don Hsu's to offset the money she had lost. She said she did not really have any hope of recovering her money, but she obviously wanted to cause John Benson, who she considered to be the real culprit, a little trouble. She had discussed the case with Don Hsu's bookkeeper and he had agreed to check the records to find out who purchased what and who got paid. Filing a case in court not only means the end of most relationships, but it also marks the end of most people's efforts to right what they consider to be a wrong.

Summary and Conclusions

This chapter, by means of specific examples, has traced the evolution of small claims cases from the original incident in dispute through actions taken by litigants after the court had disposed of the case. Most people were found to have made considerable efforts to resolve the dispute through informal and formal channels before filing a claim in small claims court. There was no evidence within the context of this study that people with multiplex relationships made greater prelitigation efforts than those with no relationship prior to the incident in dispute. Of cases eventually filed in small claims court, litigants with no prior relationship made the greatest efforts to resolve the problem prior to filing. However, it must be remembered that few cases are filed in small claims court by persons with multiplex relationships. This fact

supports the hypothesis that these persons are indeed most likely to attempt to settle disputes informally. In any case, after a claim was filed, the litigants, regardless of their prior relationship, ceased all communication with one another. A few litigants differed from the majority of litigants by going straight to a third party other than the court or by resorting to violence without attempting to informally and amicably resolve the dispute. Hall's concept of action chains was suggested as an explanation for the behavior of this very distinctive set of litigants, all of whom had Mediterranean or Middle Eastern cultural backgrounds. According to Hall, Middle Easterners follow a different series of steps when in conflict than do Northern Europeans. The lack of fit between the behavior of members of these two groups creates confusion for both sides and as a result the conflict quickly escalates.

Many people reported deciding to file a case in court, "not because of the money, but because of the way I was treated." Two different kinds of behavior appeared to incite people to file a claim: either they received the "runaround" from the other party, or the other party behaved in a hostile, aggressive, or nasty way. Persons, other than the parties in dispute, were also found to assist in transforming a grievance into a court case. In some cases, these persons were friends; in others they were coworkers or kin. Lawyers often serve this function, but they may also "cool out" a case by suggesting that the person not pursue it in court.

After a party has decided to file a case, he or she must go to the office of the deputy clerks, which is located several miles from the downtown courthouse. This office is not listed under "small claims court" in the phone book, a situation which confuses many litigants. Nor is there a sign anywhere in the building indicating the location of small claims court. Once individuals find the

appropriate office, they are confronted with the deputy clerks who, as shown in Chapter 5, are confused about how much assistance they should offer individuals. The deputy clerks may inadvertently either encourage or discourage individuals in their suits. They may also give incorrect information, which may be detrimental to the litigants when they attempt to present their cases in court.

After filing, the next step in the small claims process is the pretrial hearing. For the uninitiated, the fast-paced activity that occurs during the pretrial hearing is confusing to the point of being incomprehensible. The different personalities of the judges are expressed in their behavior during pretrial hearings: Judge Ryan acts "folksy," cracking jokes and trying to make people feel comfortable; Judge Cain's behavior is slow and deliberate; Judge Faraday is quick and businesslike; and Judge Russell, the reformer, tries hard to please everyone. There are, however, some overriding similarities in the behavior of all the judges during pretrial hearings. Each of the judges refuses to become involved with the details of any particular case during pretrial hearings. Usually any questions asked by the judges revolve around the amount of the claim. The judges, to varying degrees, treat represented and unrepresented litigants differently during pretrial hearings. For example, the judges never pressure attorneys, as they do unrepresented litigants, to go into the hallway to talk. Judges also usually readily grant requests from attorneys.

The discussions that occur in the hallway during pretrial hearings appear to be different in reality from the way they are ideally conceived by the judges. The judges view these discussions in a positive way as conciliation or negotiation. They ideally conceive of them as entailing rational presentations by each litigant of his or her side. In contrast, it appears, however, that these

discussions have a strong element of coercion, with the stronger party attempting to impose his or her will on the weaker party.

Little conciliation or negotiation occurs during the pretrial hearings. These hearings, according to the judges, are also supposed to function as a means of educating unrepresented litigants whose cases will later go to trial. In general, however, very little information is given during pretrials. The judges may in fact intend to give unrepresented litigants assistance during pretrials, but the setting is simply not appropriate for providing anything except very general information. The judges also have no concrete incentives for effective resolution of the problems brought before them; they do, however, have a vested interest in the speedy resolution of cases at pretrial hearings since they will later have to hear any case that remains unresolved.

A formal hearing or trial is held in 13 percent of all cases filed in small claims court. It appears that persons involved in multiplex relationships are more likely than those involved in simplex relationships to demand a formal trial. The degree of formality during these hearings varies by case and by judge. Judge Ryan, the folksy magistrate, prefers to hear cases informally in his office, whereas the other judges prefer to use the courtroom if it is available. The litigants interviewed preferred to have their hearings held in private. During the hearings, all the judges are interested in determining two things: whether the defendant is liable and whether the amount of damages is fair. The judges transformed and narrowed the disputes brought before them in such a way that they were able to make decisions within the framework of their legal training. Judges varied in their adherence to formal rules and in their expectations of unrepresented litigants. All judges were more likely to follow these rules when attorneys were present.

Even in cases in which neither side was represented, certain people were observed to have difficulty presenting cases in a way understandable and acceptable to the judge. These persons include those who argue over principle, rather than points of law, some blacks, and those who attempt to act like lawyers. Unrepresented litigants were found to be capable of success (i.e., receiving a judgment) in small claims court, but only when they were well prepared and when they presented their cases in terms understandable to the judges.

All the judges use the same basic legal principles to decide cases in small claims court. The most fundamental of which is that the burden of proof is on the plaintiff. The judges vary in how they present their decisions: Judge Ryan always mails his decision on a standard form at a later date; Judge Cain gives and explains his decision at the end of the hearing when possible; and Judge Russell mails his decision at a later date. Judge Russell frequently outlines the course of his reasoning in his decision. Feelings of bitterness and anger do not end with the court's decision, but even litigants who are unhappy with the decision feel there is nothing left for them to do. Filing a case in small claims court almost always signals the end of a relationship. Out of the forty-two case studies, in only one instance did the litigants plan to continue their relationship.

In conclusion, litigants were found to have a variety of reasons for filing cases in Leon County small claims court. Some, particularly businesses, simply wanted the money legitimately owed to them by defendants; others filed cases to "get even" with someone they thought had treated them unfairly, whereas others filed at the urging of another person. Litigants also presented their cases in different ways, with the greatest differences observed between attorneys and nonattorneys. Differences in presentation were also observed

between some blacks and whites. Other differences were also found based on age and sex. Older, usually white, males were most likely both to argue over principle and to act like lawyers, whereas older women, both black and white, were more likely than others to display ignorance of court proceedings and of common business practices. Differences between blacks and whites and between males and females were less evident among younger litigants, many of whom were well prepared for court.

Although the judges did vary in their responses to different types of litigants and different types of cases, no clear patterns of discrimination emerged. The judges responded positively to all litigants who were well prepared, respectful, and rational in their presentations, regardless of their race, sex, or social class. Analysis of the 291 case file further supported this view that the judges are generally even-handed in their treatment of litigants. It was found that plaintiffs who were not represented by attorneys were as likely to win (i.e., receive a judgment) as plaintiffs who were represented. Likewise, plaintiffs who were individuals were as likely to win as plaintiffs who were businesses. The situation was different for defendants: defendants who were represented fared better than defendants who were not, and defendants who were businesses fared better than individual defendants. It must be remembered, however, that many unrepresented, individual defendants default, leaving the judges no choice but to rule for the plaintiff. Thus these findings concerning defendants should not be viewed as evidence for favoritism on the part of the judges toward businesses and attorneys.

Notes

¹A study by O'Barr (1982) published after the draft of this dissertation was written also addresses the practical effects of litigants' communication styles. Based on transcriptions of tape recordings of witnesses in a North Carolina criminal court, O'Barr identified three communication styles -- powerful vs. powerless, narrative vs. nonnarrative, and hypercorrect vs. formal. Using the experimental approach of social psychology, he found that student raters evaluated negatively witnesses who used powerless speech, nonnarrative speech, or hypercorrect speech. He did not address the issue of Black English. His hypercorrect style has some elements in common with "acting-like-a-lawyer style," especially in that both are pretentious. O'Barr found narrative answers were evaluated positively. I found judges preferred short and to the point answers.

CHAPTER 7 CONCLUSIONS

This study began out of a desire to learn more about dispute settlement in a complex society. The anthropological approach is clearly cross-cultural, but in comparison with the amount of work completed on dispute settlement in tribal and village societies, little work on dispute settlement has been undertaken in modern complex societies, such as the United States. Much of the work that has been done has entailed exploration of alternatives to the formal judicial system (e.g., Nader 1980; Witty 1978). Both Nader (1980) and Witty (1978) began their studies with the assumption that the formal legal system in the United States is not fulfilling its dispute settlement function for the majority of the nation's citizens. In response to this type of criticism, many reforms to the judicial system, especially to the lower courts, have been suggested in recent years. Proposals include arbitration as an alternative to adjudication (National Institute of Consumer Justice 1972) and mediation through neighborhood or community dispute settlement centers (Danzig and Lowy 1975). Before these reforms are implemented on a large scale, it is important to examine exactly how the courts are functioning or failing to function.

A small claims court in a southern county was selected for detailed study. Small claims courts have long had the reputation as "people's courts." Thus, it was thought small claims court would be the most likely place within

the formal judicial system to find minor disputes brought by individual citizens. Because the costs are relatively low and procedures relatively simple, small claims court is open to a wide cross-section of members of different races, classes, ethnic groups, and organizations. Many individuals present their cases in their own words without the assistance of attorneys. A small claims court in Leon County, Florida, was selected for study not only because of its typically wide range of participants, but also because a variety of dispute settlement mechanisms, including conciliation, negotiation, and adjudication, may be observed within the context of the court. In addition, few studies of small claims courts have been conducted in the South. Because of these factors a study of a single small claims court was seen as an economical way for a single researcher to begin to study dispute settlement in the United States.

Nader and Todd's (1978) processual approach was selected as the general theoretical framework for the study. This approach is based on description of the behavior and attitudes of all participants in the disputing process and was considered more appropriate for studies of dispute settlement in the United States than earlier approaches developed in the study of tribal and village societies. Many of these theories, such as Hoebel's (1954), Redfield's (1967), Pospisil's (1967), Bohannon's (1967), make assumptions about the nature of law that may not accurately be reflected in modern societies. Nader and Todd (1978) believe that before a general theory of law can be developed, the ways in which disputes arise and are handled in a wide range of societies must be carefully documented. To facilitate cross-cultural comparison of disputing, they suggest that disputes be described in terms of certain universal components: the items in dispute, the parties involved in the dispute, the way in which the dispute is presented and handled in a public forum, and the outcome and its

enforcement. For this study, Nader and Todd's general dispute components were translated into a series of specific questions:

1. Who uses the court and for what purposes?
2. What is the relationship between the parties?
3. What is the relationship among court personnel? What attitudes do they bring to the process?
4. What steps do the parties take to resolve the case before filing? At what point do they decide to file in court?
5. What is the nature of the interaction between the court and the litigants?
6. What happens to cases after they are brought to court?

Based on the anthropological literature and the literature on courts in the United States by researchers in a variety of disciplines, several hypotheses relating to these questions were then generated. These hypotheses, first presented in Chapter 1, are repeated here:

1. The people who use the court will come from widely varying backgrounds, will differ in their perceptions and expectations of the court, and will use varying strategies to maximize their chances in court. Despite the variety of individual responses, it is expected that certain patterns will emerge:

- a. Socioeconomic status (as defined by occupation, residence, income, and education), race, ethnic group, and sex will be related to the frequency with which people bring cases to court and win cases. Higher status persons will bring more cases than lower status persons and lower status persons will have more cases filed against them than higher status persons (cf. Black 1976).

- b. Higher status people will be more likely to respond to a summons to appear in court than lower status people (Moulton 1969).
 - c. Business organizations (e.g., corporations, partnerships) and service professionals (e.g., physicians, attorneys) will be more likely to bring cases to court and more likely to win (Black 1976), whereas private individuals will be more likely to have cases filed against them than organizations.
 - d. Plaintiffs will be more likely to win than defendants (Dellinger 1972; Hollingsworth et al. 1973; Pagter et al. 1964).
 - e. Litigants represented by attorneys will be more likely to win than unrepresented litigants (SCCSG 1972).
2. Litigants who have ongoing, especially multiplex, relationships with each other will be more likely to choose informal means of dispute settlement than litigants who are strangers (Nader 1969b; Gluckman 1955; Collier 1979), and people of equal rank will be more likely to compromise than people of unequal rank (Black 1976; Starr and Yngvesson 1975). Before filing in small claims court, people with these kinds of relationships will have attempted to resolve the dispute by more informal means. Within the small claims court, these people will be more likely to choose negotiation or conciliation over adjudication.
3. Within the small claims court different kinds of litigants and different types of cases will be handled differently by judges and other court personnel. As Black (1980) found for dispute settlement by police, different styles (e.g., penal, conciliatory) may be used by judges for different types of cases.

4. Higher status litigants (businesses, those represented by attorneys, those of higher socioeconomic status) will be more likely to have the decision of the court enforced in terms of a collection of judgment than lower status people.

A combination of qualitative and quantitative methods was used to address the research questions and hypotheses. Three types of samples were selected: a simple random sample of 291 case files from 1979; a sample of 800 pretrial hearings over a period of a year and a half; and a sample of 42 cases for extensive study. Quantitative methods were applied to data in the case files and to quantitative aspects of pretrial hearings. The pretrial hearings were observed, and the case studies were observed and their participants interviewed. In addition, participant observation within both the court and the community was used throughout the year and a half study period.

In this final chapter, conclusions from the data analysis chapters will be summarized. Based on these conclusions, recommendations for improving the functioning of the court will be made. The second part of the chapter will examine the Leon County small claims court in its wider contexts. The Leon County court will be viewed in its historical context and in light of both previous research on small claims courts elsewhere and anthropological theory and concepts relevant to dispute settlement cross-culturally. Of concern is the issue of the degree of the contrast between law in the United States and law in traditional, small-scale societies. Is the Leon County small claims court accurately characterized as "law between strangers?" Is access limited by high costs, delays, distance, lack of information, and domination of dispute settlement forums by professionals as Nader and Todd (1978) suggest?

Litigants

Critics of small claims court have argued that the individual has been forgotten as the court has come to be dominated by businesses and attorneys. Individuals when they do appear are most likely to be defendants. As in all small claims courts studied to date, in Leon County small claims court organizations were found to file more cases than individuals. The majority of plaintiffs (83.4 percent) in the case file sample were businesses, service professionals, or landlords; in contrast, the majority of defendants (80.7 percent) were individuals or tenants. In most cases, businesses or professionals were suing individuals for nonpayment of bills. Many of the businesses appearing in small claims court, however, were small and locally owned. Only 6.9 percent of all cases entailed an individual suing a business.

The relationship between attorney representation and litigant status was not as simple or straightforward as the original hypothesis "higher status persons and organizations are more likely to have attorneys" implies. A fairly large proportion of plaintiffs (36 percent) was found to be represented in small claims court; whereas a relatively small proportion of defendants (7.2 percent) was found to be represented. Attorney representation was not found to be related to type of plaintiff: business and nonbusiness plaintiffs were almost as equally likely to be represented. The probability of plaintiff representation did appear to be influenced by type of defendant: individuals suing individuals appeared to be less likely to be represented than either businesses suing individuals or individuals suing businesses. It was suggested that individuals suing businesses may hire attorneys in an effort to balance their side against what they perceive to be a more powerful opponent. In contrast to the situation for plaintiffs, attorney representation did appear to be related to type

of litigant for defendants: business defendants were found to be much more likely to be represented than individual defendants. This may be explained by the fact that the vast majority of suits against individual defendants consist of uncontested suits for the nonpayment of bills, whereas suits against businesses are much more likely to entail complicated consumer issues.

Analysis of questionnaires sent to litigants in the Florida Supreme Court study also suggested that status is not simply or directly linked to attorney representation in small claims court. Litigants found to be most likely to be represented were in the middle income brackets. Inconsistent data were found on the relationship between attorney representation and sex and race. Analysis of pretrial observations revealed that male plaintiffs were more likely to be represented than female plaintiffs, whereas in the case file sample, approximately equal percentages of males and females were represented. In the pretrial observation sample, a higher proportion of white than black plaintiffs were represented. A clearer relationship was found for defendants (regardless of sample): approximately equal percentages of males and females and blacks and whites were represented when defendants. Crosstabulation of census tracts of litigants with attorney representation further complicated the issue of attorney representation. No significant relationship was found between residence and attorney representation for either plaintiffs or defendants. From this study, it cannot be concluded that higher status litigants are more likely to be represented by attorneys in small claims court.

Clearer evidence was found to support the hypothesis that higher status people bring more cases to court than lower status people. The variables observed during pretrial hearings, with the exception of sex, point to the lower status of defendants vis-a-vis plaintiffs. Consistent differences were not found

based on sex: approximately equal numbers of males and females were plaintiffs, while more males than females were defendants. The situation was different for race: whites were overrepresented in the sample of plaintiffs in relation to their proportion of the county population; whereas blacks were overrepresented in the sample of defendants. In general, plaintiffs also tended to be younger, better dressed, and more attractive than defendants.

The higher status of plaintiffs was not supported by analysis of residence by census tract in the case file sample of plaintiffs and defendants. No clear differences between plaintiffs and defendants were found in terms of residence, income, or race based on census tract. This method was also used to test the hypothesis that higher status persons would be less likely to default than lower status persons. Examination of productivity of defaulters and income and racial composition by census tract also failed to show any relationship. These findings brought into question the finding from observation that defendants are generally lower status individuals than plaintiffs.

Two possible explanations were given for the discrepancy between the finding based on observation and address matching to census tracts: more lower status than higher status defendants may appear in court because higher status persons are more ashamed of being called as defendants; appending census tracts to addresses is a crude measure of socioeconomic status since there may be a great deal of variation within the tract. The sample size was also relatively small. The second explanation is more plausible. Originally, it was intended to match addresses with census block data yielding a much more accurate indication of socioeconomic status. In future studies, such a method could be used to gain information about the socioeconomic status of a large number of plaintiffs and defendants, including those who do not appear in court.

But from this study, it does appear that as a group defendants are more disadvantaged socioeconomically than plaintiffs.

The data from the forty-two detailed case studies suggest that litigants in contested cases are different from litigants in general. The litigants in the case studies appeared to be more equally matched than litigants in general. Among the litigants in the case study sample males outnumbered females nearly two to one. In contested cases, litigants are much more active and assertive in their claims and defenses than most small claims court litigants. The fact that the majority of these litigants are males is consistent with the generally more assertive role of males in the United States. The racial composition of this sample, however, more accurately mirrored the general county population than the observation sample, with fewer differences found between plaintiffs and defendants.

Analysis of over 500 observed pretrial hearings indicated that Nader and Todd (1978) are correct in their assertion that most law suits in the United States are between strangers. Over 90 percent of the observed cases appeared to result from an anonymous business transaction. Most of these cases were uncontested and many decided by default. Again, a different situation emerged in the case study sample. In this sample, even cases that on the surface seemed to be over a simple business transaction turned out to be socially complicated, multifaceted disputes that prove very time-consuming for the court. Outsiders were found to play a key role in the escalation of many of these conflicts. Occasionally, conflicts between family members, ex-friends, and neighbors are filed in court. These conflicts are the most complicated and troublesome cases filed in small claims court and also nearly always entail far more than the

stated issue in dispute and present particular problems for the judges who are uncomfortable dealing with the emotions that frequently accompany these cases.

Court Personnel

Tension between court personnel and litigants, as well as between judges, attorneys, and clerks was found in Leon County small claims court. The judges were generally aware of the problems faced by unrepresented litigants, but they were uncertain about the degree of assistance they should give them, particularly when the other side is represented by an attorney. Judges were also ambivalent about the use of attorneys in small claims court: they viewed attorneys as making the judge's job easier by buffering them from members of the public, but some judges also thought attorneys provided one side with an unfair advantage. In recognition of the difficulty inherent in cases in which only one party is represented, one of the judges preferred to hear cases in which both sides were represented, whereas another judge stated a preference for cases in which neither side was represented. All judges, however, believed that certain types of cases, variously characterized as disputes between irrational people and disputes that require psychologists, were inappropriate for small claims court.

An unanticipated finding of this study was that clerks as well as judges perceive their role to be stressful. The clerks viewed themselves as in an uncomfortable position between the judges and the public. The judges, out of a stated concern for the unauthorized practice of law, insist that the clerks not give advice. Meanwhile members of the public constantly ask for, and occasionally demand, assistance from the clerks. The clerks are not automatons, which is essentially what the judges would like them to be. There

is no way to prevent them from interacting with persons who come to their office to file claims. The clerks were observed to attempt to answer people's questions, but since they have not been properly trained to give advice, on several occasions they were observed to give incorrect or incomplete information.

Attorneys in small claims court were not found to be as confused about their proper role in the court as judges and clerks were: they perceived their role in small claims court as similar to their role in other courts. However, many Florida attorneys responding to questionnaires sent by the office of the State Court Administrator were dissatisfied with the behavior of small claims court judges. These attorneys thought the judges were too quick to assist unrepresented litigants and too prone to rule by equity instead of by law. Meanwhile, several litigants interviewed in the course of this study thought judges favored attorneys in small claims court.

A small group of attorneys was found to make regular appearances in Leon County small claims court. Most of these attorneys are young and in solo practice. They usually represent businesses trying to collect unpaid bills. In contrast to most of the individual litigants, the attorneys are well known to the judges. The judges generally have a friendly, easy going relationship with most of them and readily grant most of their requests.

The Small Claims Process

Analysis of the forty-two case studies was used to trace the evolution of small claims cases from the original incidents in dispute through actions and attitudes of litigants after the court had heard the case. Contrary to some judges' belief that people are too quick to file a lawsuit, most litigants were found to have made considerable efforts to resolve the dispute through both

formal and informal channels before filing in small claims court. No evidence was found from the case study sample that people in multiplex relationships made greater prelitigation attempts to settle than people in simplex relationships. However, the fact that few cases between persons with multiplex relationships are filed in the court does suggest that these persons use modes other than the court to deal with disputes. A few litigants went directly to a formal organization other than the court or resorted to violence instead of attempting to resolve the dispute informally. Cultural differences in action chains was suggested as an explanation for the unusual behavior of these few litigants. After a claim was filed, the litigants, regardless of the nature of their prior relationship, ceased all communication with one another.

Hostile behavior or avoidance by the defendant incited many individuals to file in small claims court. As one litigant said, "it was not the money but the way I was treated." Persons, other than the parties in dispute, were also frequently instrumental in transforming a grievance to a court case. Once litigants reach the clerk's office to file a claim, their cases may be further transformed by deputy clerks who may inadvertently either encourage or discourage individuals in their suits. The deputy clerks may further influence the course of a case by advising litigants on what they will need (e.g., papers or witnesses) for court. This advice may differ from what the judges expect and may even cause a litigant to lose his or her case.

After filing, the next step in the small claims process is the pretrial hearing. Pretrial hearings are characterized by confusion, largely brought about by the speed with which cases are processed and by unfamiliar terms used without definition by the judges and attorneys. The judges narrow any discussions during pretrial hearings to questioning of the litigants about the

amount of the claim and the terms of repayment. Judges also treat represented and unrepresented litigants differently during pretrial hearings, a behavior that becomes more marked during small claims trials.

In contrast to what was expected from the Rules of Summary Procedure, little conciliation or negotiation was observed during pretrial hearings. Conciliation that did occur revolved around the narrow issues of the amount of debt and methods of repayment. When other issues were raised by the litigants, the judges suggested (and sometimes insisted) that the litigants go into the hallway to talk. From interviews with litigants, it appears that these discussions have a strong element of coercion, with the stronger party attempting to impose his or her will on the weaker party. The judges also conceive of pretrials as functioning to educate unrepresented litigants about what they will need if the cases go to trial. Little information, however, was given to litigants by judges during pretrials. The setting itself, in which a mass of cases are heard in a short period of time, was found to be inappropriate for providing anything except very general information, despite the stated intentions of the judges.

In contrast to mediators and adjudicators in tribal and village societies, the judges in Leon County small claims court are not linked in any meaningful ongoing way to most of the litigants who come before them in small claims court. In fact, they are supposed to disqualify themselves from hearing cases in which they are involved in any way with one of the parties. Thus, unlike third parties who are linked economically and socially to disputants, the judges in small claims court have no vested interest in the effective resolution of the majority of disputes brought before them. In fact, approximately 90 percent of all cases filed are disposed of in a minute or less during the pretrial hearing.

The judges do have a vested interest in the speedy disposition of cases at pretrial hearings since they will later have to hear any case that remains unresolved. The situation is different in cases involving an attorney. The judges are part of the community of attorneys in much the same way third parties in tribal and village societies are part of the local production unit. The judge must please attorneys since it is attorneys for the most part, not members of the public, who are responsible for keeping a judge in office.

Certain types of cases were found to be more likely to result in a formal hearing or trial. People involved in multiplex relationships appeared to be more likely than those involved in simplex relationships to demand a formal trial. Thus, the hypothesis that persons with multiplex relationships are more likely to choose informal methods of dispute settlement was not supported within the context of the court. Individuals v. business cases were also more likely than other types of cases to result in trial. It was suggested that plaintiffs in these cases request a trial in an effort to balance what they perceive to be a structurally unequal dispute. They are also probably more assertive and knowledgeable than litigants in general as evidenced by the fact that they have taken the initiative to file suit against a business in the first place.

During the hearings, the judges transformed and narrowed the disputes presented by the litigants. They asked questions and directed the presentations in ways they considered relevant based on their legal education and experience. Their behavior varied depending on whether attorneys were present. In these instances, all judges were observed to be more likely to follow formal rules, such as the rules of evidence.

Certain types of persons were found to have difficulty presenting their cases to the judge in an understandable and acceptable way. Communication

problems were observed between the judges and persons who argue over principle, those who attempt to act like lawyers, and some blacks. Unrepresented litigants were capable of success (i.e., receiving a judgment) in Leon County small claims court within certain limits--they must be well prepared and they must present their cases in a way that is meaningful to the judge.

Nader (1980) has suggested that individuals do not use the court because of delays, expense, domination of courts by professionals, and lack of information. The Leon County small claims court, however, was found to be relatively accessible in terms of time and money. Contested cases are scheduled individually so that persons do not have to wait for their case to be heard, although they usually have to wait two months between the pretrial hearing and trial. Filing costs are relatively low (\$6 for claims under \$100, \$15 for claims between \$100 and \$1,000, and \$20 for claims between \$1,000 and \$1,500) and may be waived in cases of insolvency.

Lack of information and domination of the court by professionals were found to be real barriers to success in court for many litigants. As has been seen, the court provides litigants with little information. Out of concern for the unauthorized practice of law, judges instruct clerks only to take claims and not to give advice. Pretrial hearings are ideally conceived by the judges as the appropriate place to provide litigants with needed information. In some cases, the judge will explain to the litigants what they need to bring and what they will have to prove at their trial, but in the vast majority of cases, the judge gives no information unless the litigant asks a question. The judges also believe litigants are given the information they need in the notice for final hearing form. This notice states that the litigant should bring witnesses and relevant papers to the trial. This technique is also inadequate. Interviews revealed that

many litigants do not think of a damage estimator or a mechanic as a witness; they consider a witness to be a person who observed the event in dispute. Instead many litigants come to court with written estimates or statements only to have them rejected as hearsay, particularly if the other party is represented by an attorney. Lack of preparation and knowledge is most detrimental in cases where the other side has an attorney. As has been shown in specific case studies, the judge is far more flexible in terms of what he accepts as evidence when attorneys are not present.

Leon County Small Claims Court
In Its Wider Contexts

Many of the quantitative findings of this study are consistent with the results of studies of other small claims courts in the United States (for example, Pagter et al. 1964; Hollingsworth et al. 1973; Dellinger 1971; Ruhnka et al. 1978). As in these other courts, in the Leon County court a high percentage of plaintiffs were businesses and a high percentage of defendants were individuals. Nearly all cases that reached judgment were decided in favor of the plaintiffs; more than half of these were decided by default. Business plaintiffs, however, were not found to have a clear advantage over individual plaintiffs. In terms of receiving a judgment from the court, individuals fared almost as well as businesses when plaintiffs. Attorney representation was also found to have little effect on the plaintiff's ability to win a judgment. Ruhnka et al. (1978) found a similar relationship for contested cases in their fifteen court sample. The situation was found to be different for defendants in Leon County. Among defendants, both being a business and having an attorney

appeared to have an effect on case outcome: business defendants and represented defendants were more likely to win than individual defendants and unrepresented defendants.

The high rate of default found in Leon County, as well as in other small claims courts, cannot be explained or evaluated with the data from this study. Moulton (1968) suggested that many defendants may have valid defenses, but fail to appear because they are afraid of the court. The attitude found among the legal personnel in the Leon County court is that defendants fail to appear because they simply owe the money and they hope "to prolong the inevitable," in one judge's words. Evaluation of these two positions would require a separate study, entailing finding, establishing rapport with, and interviewing defaulters. Collection also appears to be a problem in Leon County as it is in other courts. But again, the extent of the problem is unknown and would require a separate study. When the defendant pays the judgment, the plaintiff is supposed to file a satisfaction of judgment form with the court. However, most plaintiffs fail to file these forms.

Many small claims court researchers have also criticized the court for not fulfilling the goals of the founders of the court (Pagter et al. 1964, Hollingsworth et al. 1973, Moulton 1969; SCCSG 1972; National Institute of Consumer Justice 1972). As detailed in Chapter 3, small claims court was never intended to serve the poor as some of the court's critics have assumed. By the "poor," early writers were not referring to the lower class, but to the middle class--to the vast majority of the population, the millions of humble and plain people who were unable to afford the cost of litigation (Yngvesson and Hennesey 1975; Smith 1919). By serving many small businesses in their efforts to collect debts, the Leon County court continues to fulfill its original function. Middle class

litigants, who were generally better prepared than lower class litigants, also generally fared well in the Leon County court, although they represented a small percentage of the court's caseload.

The court was also originally intended to be speedy and inexpensive. Cases in Leon County small claims court took an average of 52 days from filing to pretrial, and an average of 67 more days elapsed between pretrial hearing and trial. In the courts sampled by Ruhnka et al. (1978), the time from filing to resolution was rarely more than six weeks. From the standpoint of efficiency, scheduling cases at a later date in Leon County may seem to be a needless delay. But because it removes cases from the assembly line processing of cases during pretrial hearings and allows both the litigants and the judge to concentrate on single cases in a more relaxed atmosphere, such delay may not only be warranted but desirable. In Leon County, the filing fees for small claims have remained low, but the sum of other costs and fees that a person can accrue, especially if they hire an attorney or initiate formal collection procedures, may be considerable (Purdum 1981).

Certain problems have existed from the inception of small claims court and continue today. Some of these result from the attempt to transfer one model of dispute settlement from one society to another. In Chapter 6 important differences were pointed out between the Norwegian village courts of conciliation, on which the original concept of small claims court was based, and small claims courts as they developed in the United States. Many of these differences have resulted from differences between the two cultures. The Norwegian courts evolved in a village society in which both disputants and conciliators knew one another whereas small claims courts were essentially an urban development. As such, they reflected the value of a newly industrialized

society--speed and efficiency. The atmosphere and values expressed by small claims courts are not conducive to effective dispute settlement. Problems result both for judges and litigants. In Leon County, it was shown that the judges are unsure of their proper role in small claims court. Accustomed to having attorneys protect them from the public, they feel uncomfortable having to deal directly with litigants. They find cases in which one side is represented and one is not particularly difficult. Combining adjudication and conciliation into the single role of small claims court judge is also problematic. Most of the time, the judges resolve this conflict by acting as adjudicators.

The judges' problems in small claims court have been exacerbated by the changing roles of clerks and attorneys. Clerks, as well as judges, were described as taking an active and important role in early small claims courts (Clayton 1939; Alper 1934; Harley 1919; Pound 1913). Apparently, few attorneys were found in the early courts (Anon. 1920; Committee on Small Claims and Conciliation Proceedings 1924). In many courts, clerks helped litigants prepare their cases for court. The role of the clerks in Leon County today has been reduced to accepting whatever claims people bring them and to refrain from giving advice. Meanwhile, the role of attorneys in small claims courts as elsewhere has expanded. This expansion is part of the process of professionalism that began to emerge in the early twentieth century. According to historian Christopher Lasch, the professions did not develop

in response to clearly defined social needs. Instead the new professions themselves invented many of the needs they claimed to satisfy. They played on public fears of disorder and disease, adopted a deliberately mystifying jargon, ridiculed popular traditions of self-help as backward and unscientific, and in this way created an intensified (not without opposition) demand for their own services. (1978:228)

Today, a substantial proportion (36 percent) of plaintiffs are represented in the Leon County court. A small group of attorneys, known as collection attorneys, has found a niche in small claims court, collecting small fees from each of the vast number of cases they file. The expansion of the role of attorneys and the curtailment of the role of clerks is not a coincidence. The stated issue for clerks not giving advice is the "unauthorized practice of law." "The unauthorized practice of law" is an issue frequently raised by attorneys. The legal profession has ethics committees on the national, state, and local levels. But, according to Krause (1971), these committees spend much of their time dealing with individuals accused of the "unauthorized practice of law," instead of disciplining members of their own ranks. They function like medieval guilds to protect the work of lawyers from encroachment from others. Much of the work considered by lawyers to be legal work is essentially the filling out of forms. Lawyers may charge between \$500 and \$1,000 for completing a few forms, a task which takes a secretary an hour or less to complete (Krause 1971). Because of this history of self-interest among members of the legal professional, one must always be suspicious whenever the issue of the "unauthorized practice of law" is raised. In large part, it is a spurious issue propagated by attorneys to protect members of their own ranks.

The Leon County small claims court not only reflects some of the historical developments of law in the United States, but it also tells us something about the nation's culture and social structure. Differences in status based on sex and race were found among court personnel. All lawyers and judges observed in court were white males despite the increased law school enrollment in recent years of blacks and females. The clerks of the court and the supervisor of the deputy clerks were also white males, whereas the deputy

clerks (with the exception of one black male employed temporarily and one black male) were white females. In accordance with contemporary American culture's value for physical attractiveness among females, the two most attractive deputy clerks were "placed on display" during pretrial hearings. Fewer differences based on sex were found among litigants than found among legal personnel. Equal numbers of males and females were plaintiffs. More males than females, however, were defendants. Perhaps this is because males are likely to have more credit obligations in our society than females. Males may also be expected to be more knowledgeable about business and legal issues than females since they are more likely to participate in these areas of American life than females. Although many female litigants were well prepared for court, some, like Mrs. Anderson described in Chapter 6, displayed almost total ignorance of business and legal matters, suggesting that they had always relied on males in these areas. Clearer differences based on race than these based on sex were found in the pretrial observation sample: more plaintiffs were whites and more defendants were black than expected by their proportions in the general population. However, based on statistics from the case files and from pretrial observations neither race nor sex appeared to have an effect on case outcome. Nevertheless, analysis of interactions during hearings indicates more subtle forms of discrimination may occur in court. It was suggested that some blacks, because of particular communication styles evolved as a consequence of their historically subservient position in American society, are at a disadvantage in court.

In contrast to communication problems sometimes observed between litigants and judges, communication between attorneys and judges generally occurred smoothly in small claims court, largely because both groups speak the

same language and think in the same way because of their professional socialization. Judges also belong to the local community of attorneys and are thus more motivated to please their peers than they are to please most litigants.

The values the judges bring to the decision-making process in small claims court are different from the values of many of the individual litigants. Many litigants expressed the dispute as an issue of "right or wrong" or "fair or unfair," whereas the judges were only concerned with the narrow issue before them as expressed in writing on the claim form. They were not interested in the context of the dispute: As one judge said, "I don't question." When individuals do attempt to present details of the dispute not considered relevant to the judges, the judges respond either by redirecting the conversation or by letting litigants talk, but by ignoring the content of the litigants' discourse in their decisions. As Moore has said about adjudication in general, "a highly personal and idiosyncratic situation from the point of view of the parties... is classified as an instance of a general category.... Once the issues are narrowed in this way there is no need to inquire into the general situation.... Most of the time... [what is preferred] is not to know why anything has happened, but rather what occurred, or even more narrowly, what can be shown... to have occurred" (Moore 1977: 182-83 quoted in Felstiner, Abel, and Sarat 1980-81:647). Judges even ignore reports of criminal activities, contending that such issues are not before them. The extremely passive nature of the judges is a shock to many litigants. These litigants come to court with high expectations that the judges will somehow magically see the validity of their cases and rule in their favor. Many also believe the judge will punish the wrongdoer, although his acts may not be legally wrong.

The passive, reactive nature of the small claims court reflects several long standing American values. The most obvious value represented by the court is the notion of equality of individuals. The judges believe that each individual has an equal opportunity to present his or her case and that any failure to do so adequately is the individual litigant's problem. In the United States, courts are conceived in much the same way the economic system is conceived. As Garretson (1976) has noted, according to the notion of the fair market, the law of supply and demand will automatically guarantee that goods are sold at a fair price and that workers are paid a fair wage. The ideal conception of the court is similar: individuals will compete fairly in front of the judge and through this competition justice will be achieved. Failure in court, like economic failure, is considered the fault of the individual, and not the fault of the system. Related to this notion of equality of the individual is the ideal conception of the United States as a "melting pot." The "melting pot" explains how persons of obviously different backgrounds become equal. "In the great melting pot of American society, differences -- foreign languages and customs would disappear; ethnic ties would be severed; and everyone would be plain 'American' " (Garretson 1976:13). As the detailed cases presented in this study suggest, the dispute behavior and values of members of different groups of American society are not the same. Variations were observed based on race, class, ethnic group, age, sex, and profession.

The judges also express another characteristic value of Americans -- the belief in the rationality of man. This value, along with the related emphasis on the individual, had its roots in the Enlightenment. The modern scientific method was developed during this period, and the thinkers of Enlightenment believed the laws of nature, of man, and of God could all eventually be

understood by rational human beings. In the context of the court this value is expressed in one judge's description of cases he considers appropriate for the court -- "those between rational people." He considers other cases more appropriate for psychologists. None of the judges has any tolerance for any expression of emotion in the court. They consider the bringing of many cases irrational in the first place. As another judge said, if he were in private practice and someone brought a case for a small sum of money to him, he would advise the person to save the expense of court and a lawyer and to work out a compromise with the other party.

The mass of routine bill collection cases filed in the court is a consequence of another issue deeply embedded in American Society -- consumerism. Jules Henry (1965) considers the consumer habits of contemporary Americans a perversion of the original American Dream of the United States as a land of plenty. In any case, there is no denying that "a knowledge of the nature of the material world and assumptions about the desirability of obtaining goods [has] become a part of a shared American Culture" (Garretson 1976). For many people, work is not enjoyable in and of itself, but only a means of making money to obtain more and better goods. Easy credit and omnipresent advertising has exacerbated the situation. As seen in this study, members of all social strata have problems paying their bills, but, as expected, the problems hit hardest for the poor. For instance, all defendants observed in cases brought by small loan companies were black and their appearance suggested they were also poor. Small loan companies charge 36 percent interest on their loans in addition to various other charges, such as so called service charges and insurance. Thus as Caplovitz so aptly titled his 1967 book, "The Poor Pay More." It is a common attitude among middle class Americans that people should not buy things they

cannot pay for, that people are poor because they buy "luxuries" instead of necessities. The evidence from small claims court suggests many people are having grave difficulties purchasing necessities. During pretrial hearings suits brought for heating and medical bills and even for grocery bills are common.

As has been seen, the small claims court in Leon County embodies many longstanding American values. It is also remarkably similar to small claims courts studied in the rest of the United States on a number of measurable dimensions. Many of the attitudes and problems expressed by the judges and clerks in Leon County were also similar to those reported by the judges and clerks in the Office of the State Court Administrator's study of thirteen other small claims courts. All of these factors support Hill's (1977) contention that on certain objective measures the South is becoming less distinguishable from the rest of the United States. The court does, however, in some ways reflect the culture of the traditional South. Employees of the clerks' office, although paid to interact with members of the public, were unfriendly and distrustful of strangers. Judges were more conservative in their attitudes toward reform of the court system than their counterparts in other areas of the state. For example, one judge viewed Citizen Dispute Settlement, a mediation option available in some parts of the state, as "a step backwards" and "another layer to the bureaucracy."

The traditional social structure of the South is also evident in the court. More blacks than expected based on their proportion in the population were defendants, whereas more whites were plaintiffs. As seen in Chapter 3, from the days of tenant farming following the Civil War blacks were drawn into an everescalating cycle of debt. It appears that this is still occurring but at the hands of small loan companies, discount department stores, fuel companies, and

medical doctors. Fewer poor whites than poor blacks were seen in small claims court. Perhaps this difference is because there are fewer poor whites in the population, but Taylor (1970) offers another explanation. She claims Crackers, rich or poor, do not indulge in conspicuous consumption. When they are in financial need, they expect and receive help from kin. Hill (1977) further states that "plain folk" are fiercely independent and reluctant to use public services. No Crackers were observed as plaintiffs in the extended case studies. This fact is consistent with the Cracker's reluctance to confront directly his or her opponent in a dispute (Hill 1977; Taylor 1970; Paredes, Sabella, and Hepburn 1977).

In both its dispute settlement function and in its routine bill collection function, small claims court is different from many legal forums as described by anthropologists in traditional, small-scale societies. The most striking contrast is the way the dispute is disengaged from its context in modern courts. The small claims court judges' behavior characterized by narrowing and by indifference to the effect of his decision contrasts sharply with judicial behavior described for tribal societies and peasant communities. For example, consider Gluckman's description of the judge's technique among the Barotse of Northern Rhodesia:

Throughout a court hearing the judges try to prevent the breaking of relationships, and to make it possible for the parties to live together amicably in the future. . . . The judges constantly have to broaden the field of their enquiries, and consider the total history of relations between the litigants, not only the narrow legal issues raised by one of them. (1967:21)

Anthropologists have described other third parties in traditional societies throughout the world as taking considerable pains to bring about an agreement between disputing parties (for example, Barton 1919; Gibbs 1973; Evans-Pritchard 1940).

Why is such an effort not made in small claims court? It was suggested that the judges, like the town-dwelling Mexicans studied by Collier (1979), had no vested interest in successfully resolving disputes between individuals. The only group the judges have any genuine interest in satisfying are the attorneys. The judges are part of the economic community of attorneys in much the same way mediators in village societies are part of a local production unit. The future well being of both depends on keeping the rest of the "community" happy.

Related to this issue of quality of dispute settlement is the issue of enforcement of the decision. Hoebel (1954), Redfield (1967), and Pospisil (1971) considered enforcement one of the defining aspects of law in all societies. In Leon County small claims court the judges have nothing to do with enforcement of the judgments they issue. As they and the deputy clerks told people repeatedly, the court only issues judgments: it is the individual's responsibility to collect them.

Anthropologists have also stressed the fit between a society's values and the the values expressed by legal institutions. Hoebel terms these values "legal postulates" and believes that the degree of integration of a culture can be measured by the fit between legal postulates and general societal values (1954). In a similar view, Bohannon speaks of the double institutionalization of some of society's values in its legal institutions (1967). As has been shown in the detailed case studies, in small claims court there is frequently a disparity between the values expressed by the law, as articulated by the judges, and the values of the laymen. The judges themselves are frequently acutely aware of this conflict, but as they stated repeatedly, they are bound to decide cases by the law, not by equity or fairness in a more general sense. The rise of a professional class of legal

specialists with its own language, way of thinking, and values, which are primarily geared to the smooth working of business, has widened the gulf between disputants and third party decision makers in modern societies.

In many ways, law in modern societies is "law between strangers" as Nader and Todd (1978) have described it. In other ways the characterization of law in the United States as "law between strangers" is misleading. As has been seen, the vast majority of cases filed in small claims court are brought by business representatives against individuals whom they would not even recognize on the street. But all the participants in small claims court are not strangers: the judges and the clerks are quite familiar with each other and certain business owners and attorneys who regularly file cases in court. Cases are also occasionally filed between people who know one another, although from the small number of such cases it certainly appears, as other researchers have found (e.g., Galanter 1974; Friedman and Percival 1976; Sarat 1976), that most persons keep their interpersonal disputes out of court with the exception of divorces. Disputes that erupt into violence may find their way into criminal courts, although many persons are probably reluctant to press criminal charges, particularly against friends and kin. Information on disputes gathered informally during the course of this study suggests that people either use avoidance or seek the help of some sort of psychological counselor in dealing with interpersonal disputes. Even persons who believed they had a legitimate consumer complaint were reluctant to file a case in court.

Recommendations

This study was undertaken in the belief that social science research should be of some use to the group or organization under study. The following recommendations are based on the detailed study of a single small claims court and may not be applicable to all other small claims courts. The consistencies

between the findings of this study and other small claims court research in the United States, however, suggest that certain fundamental problems exist in small claims courts that cross-cut regional and other differences. Some of the recommendations made would be relatively easy to institute within the existing structure of the court, whereas others are more complex and entail rethinking of the small claims process itself, particularly as it exists in Florida.

1. In the court building directory and in the phone book, the court should be identified as "small claims court" as well as "summary claims." Only attorneys realize the court is officially called "summary claims."
2. Cases should be scheduled 30 days instead of 60 days after filing. Scheduling cases less than 30 days after filing may not allow enough time for the summons to be served. One judge's rationale that 60 days gives people more time to settle the case is not valid, since in the cases studied filing signals the severing of the social relationship between the parties.
3. The most fundamental problem identified in this study was lack of information on the part of the litigants. Litigants are not only unaware of the specific requirements of presenting a case in small claims court (for example, naming the other party correctly on the claim forms), but they also frequently have misperceptions of the function of the court: many litigants view the court as a court of equity or fairness rather than a court of law. Those individuals have extremely high expectations of the judges and either do not know or forget that the judge is bound to rule by substantive law and not by his feelings of fairness, which may in fact be in line with the litigant's feelings.

A first step in solving the litigant information problem in small claims courts would be to provide handbooks for plaintiffs and defendants describing court procedures and detailing what litigants need to prove or defend their

cases. Several excellent handbooks have already been developed elsewhere and could be modified for Florida. One of the most complete handbooks, entitled "Small Claims Court," was published in 1980 by Halt, Inc., an Organization of Americans for Legal Reform; a model handbook has been written by the National Center for State Courts (Wolfe 1980). Another possibility employed by the Harlem court is to have an attorney stationed in the clerk's office. A national study of fifteen small claims courts found that properly trained clerks are capable of giving high quality advice (Weller and Ruhnka 1979). This same study urged that law students be used in this capacity with caution; Weller and Ruhnka (1979) found that such students tended to overreact and to give more hope to litigants than their cases warranted. Another possibility especially relevant would be the development of audiovisual presentations. These presentations could include narration of the small claims process as well as actual (filmed) examples of pretrials and trials and could be shown periodically by the clerk's office. Viewing such tapes would give litigants a clearer idea of what to expect in court than handbooks could convey.

Handbooks and videotapes, however, are not enough to insure adequate preparation of litigants for trial since such tools can not provide or even anticipate specific advice needed in individual cases. Ideally the pretrial hearing is supposed to function to educate and prepare litigants for trial, but as this study has shown the pretrial hearing as it is presently structured fails in this function. The overwhelmingly emphasis during pretrials is on speed of processing cases. The judge is understandably eager to dispense with cases as quickly as possible as he faces the crowded courtroom. Litigants are also anxious to return to their seats and reluctant to describe the details of the case in so public a forum. Even in those instances when the judge does interrupt the

routine processing of collection cases to advise a litigant, the litigant is not likely to be in the proper frame of mind to receive and understand the information given. Several alternatives are possible. During pretrials litigants in contested cases could be identified and sent to another courtroom where they could be advised by another judge, an attorney, or a paralegal person. The issue in dispute should be defined and the parties prepared for trial during these proceedings. Litigants should be given advice on the type of evidence the court requires (for instance, written evidence or live testimony) and how the evidence may be acquired. If it is not possible to send litigants in contested cases to another courtroom, the judge could ask these litigants to wait until he has taken care of the other cases, and then the judge could meet with them.

4. At the beginning of pretrial hearings that have been scheduled for cases in which at least one party is represented by counsel, the judge should not dispense with his usual opening remarks. Most of the defendants in these cases are unrepresented and are as much in need of the information as litigants at the earlier pretrials in which no one has an attorney.

5. During pretrial hearings the judges should be cautious about ordering people into the hallway to negotiate. Once in the courtroom, individuals deserve due process protection. Litigant interviews suggested that these hallway negotiations can have a strong element of coercion, which should not be sanctioned by the court. Judges should also not discriminate between represented and unrepresented parties by only insisting that unrepresented parties talk in the hallway.

6. The judges should receive special training in consumer law so that they do not inadvertently, through the routine processing of cases brought by businesses, enforce illegal contracts.

7. The court should continue to schedule hearings separately at a later date. Such a practice allows the judges adequate time to concentrate on each case. It also makes the litigants feel more relaxed than they feel in the crowded open courtroom and allows them time to prepare for trial.
8. Whenever possible, hearings should be held in informal settings such as the judges' offices. Litigants feel more comfortable in these settings than in the intimidating atmosphere of the formal courtroom. It should, however, be made clear to the litigants that the person hearing the case is a judge, since one litigant interviewed during the course of the study thought the unrobed judge hearing the case was a clerk.
9. Whenever possible, the judges should announce and briefly explain their decisions at the end of the hearings. Announcing the decision by mailing of standard judgment forms after the hearing confuses many litigants who do not understand the technical language used on the forms. They also have no inkling of the basis of the judge's decision nor do they have the opportunity to ask the judge to explain or clarify his decision.
10. Analysis of courtroom communication patterns indicated that some individuals because of subcultural differences have difficulty presenting their cases in a meaningful way in court. This subject needs further study but the judges should be made aware of these differences and of the potential for misinterpretations that arise, particularly in cases where an attorney is ~~attorney are~~ not present to "translate" and to serve as a kind of culture broker.
11. The judges and the court clerks should recognize the untenable position of the deputy clerks in the small claims process. Formal training should be given to the clerks so that they are able to answer litigants' questions adequately. The kinds of questions deputy clerks can answer and the kinds of questions they

cannot answer should be made clear to them. Expansion of the deputy clerk's role would benefit both the court and the public. The clerks would not be so alienated and the public would receive needed advice.

12. The judges and the court clerk should also consider alternatives to having a deputy clerk in attendance throughout small claims hearings. The clerk is idle throughout the hearing and her only activity is to write a few words on the docket sheet at the end of the hearing and to occasionally make electrostatic copies of documents for the judge. It appears that the presence of the clerk during hearings functions primarily as a status symbol for the judges and may be an unnecessary expense. Perhaps the judge could note the case's disposition on the docket sheet and his secretary could do any necessary document copying after the trial.

13. The Florida Supreme Court, which promulgates the Rules of Summary Procedure that govern all small claims courts in the state, should consider either prohibiting or limiting the role of attorneys in small claims court. This study showed cases in which one party was represented and one party was not to be particularly difficult both for the judge and for the unrepresented litigant. Particular problems arose when attorneys objected to admissibility of evidence presented by unrepresented parties. The judges generally ruled in favor of attorneys, much to the distress of the unrepresented litigants.

Attorneys are already prohibited from practicing in small claims courts in several states. Florida could approach this problem by examining what has occurred in states where attorneys are prohibited from practicing in small claims court. Many issues must be considered beyond the obvious issue of equalizing the chances of the unrepresented litigant. For instance, the issue of what tactics collection attorneys will use if they are barred from the court

must be considered. They may simply file cases in another court, making it even more expensive and difficult for the unrepresented litigant. Additionally it is normally the attorney's job to point out relevant points of law to the judge. This role is particularly crucial in complicated consumer cases in which the judge may be unaware of the details of the law. A sensible approach may be that proposed by Weller and Ruhnka (1979) as a result of their study of fifteen small claims courts in the United States. They suggest that attorneys be permitted in small claims courts but that their participation be limited. The judge should direct all questioning. If an attorney is present "the attorney should not be allowed to question opposing parties or witnesses and should not be allowed to raise objections to testimony or evidence presented by the opposing party" (Weller and Ruhnka 1979:20). The attorney would be permitted to summarize his case at the end of the hearing.

14. The Florida Supreme Court should also address the problem of role conflict for judges in small claims court. The current court rules require the small claims court judge to be both a conciliator and an adjudicator. This study has shown that this requirement benefits neither the judges or the litigants. The judges are very reluctant conciliators and are much more comfortable in their traditional adjudicatory role. Numerous researchers (for example) have pointed out the incompatibility of these two roles, particularly for the same case.

15. The Florida Supreme Court should consider providing a mediation or conciliation option within the context of small claims court. This study found that certain types of cases were not handled very effectively by the court. These included cases between persons with a complicated interpersonal relationship, cases in which people were emotional, and cases in which the case

was primarily the result of a communication problem. Mediation in which parties work together to reach an agreement may be more appropriate in these cases. Mediation is of course an additional expense and "another layer to government bureaucracy" but consider the cost of the present system both to the court and to the litigants: This study found that 13 percent of all small claims cases filed are contested. At least half of these (6.5 percent or 455 cases annually) entail issues that the court is unable to deal with very effectively. A conservative estimate of the amount of time to hear these cases is one hour or 455 hours of a judge's time per year. Litigant costs, including feelings of frustration and hopelessness, are more difficult to measure

Maine has established a mediation option to its small claims courts (McEwen and Maiman 1981). At pretrial hearings litigants are notified of the availability of mediation and those who chose mediation are directed to another area. McEwen and Maiman (1981) found that people were less angry after mediation than after adjudication. They also found that defendants who achieved settlement through mediation were much more likely to pay part or all of the settlement than defendants who had a judgment imposed. This is a finding of significant practical relevance since collecting of small claims court judgments is a severe problem in Leon County and elsewhere. Citizen Dispute Settlement, a mediation program, existing in some areas of Florida could possibly be expanded to fill this need for mediation in some small claims cases.

16. The court, at both the local and state levels, should advertise the existence and usefulness of small claims courts, particularly in consumer cases.

Areas for Future Research

A general, exploratory study like this one frequently raises more questions than it answers. Specific questions about the small claims court itself as well

as broader theoretical questions about the nature of dispute settlement in complex societies were raised as a result of this research.

Within small claims court several areas need further study. Although fewer differences between plaintiffs and defendants, especially in contested cases, were found than expected from the small claims court literature, more information is needed on a larger sample of litigants. Little information was contributed by this study on defaulters, a topic of concern both to the court and to other researchers. Address matching by census tract did indicate that defaulters come from all strata of society and are not shiftless, lower class individuals as the stereotypic term "deadbeat" frequently applied to them by members of the legal profession suggests. A separate study would have to be designed to gain information on defaulters. Address matching could again be used to identify areas in which defaulters live. Interview schedules could then be designed and interviewers selected as appropriate for each area. Negotiation is another aspect of the court in need of further study. Information from interviews with plaintiffs suggests there is a strong element of coercion in these meetings in contrast to the way they are ideally conceived by the judges. The percentage of judgments issued by the court that are satisfied also remains unknown. Because these data are unavailable in the case files, plaintiffs in cases in which judgments were issued would have to be interviewed. This single issue could probably be addressed effectively through telephone interviews.

Many questions outside of the limited context of a single small claims court remain unanswered. It was shown that few people bring disputes to small claims court. How then do people deal with their disputes? Are they more likely to bring their disputes to criminal rather than civil courts? Are alternatives to adjudication such as mediation likely to be more effective

means of resolving particular types of disputes? The question of the nature of communication between members of various subcultures was also highlighted by this study. This question goes beyond a single setting and has obvious implications for all our institutions.

Another theoretical question is the nature of the difference between disputants in modern society. Nader and Todd's (1978) characterization of law in modern society as "law between strangers" suggests that although disputants are strangers they are equals in the sense that both are individuals. But in modern societies, most civil law cases are not between individuals, but are either between two organizations or between an organization and an individual. Cain and Kulcsar (1982) have argued that anthropologists, like members of the legal profession, have failed to recognize that qualitative, not quantitative, differences exist between disputants:

[A] presumption of dispute theory is that of the qualitative identity of the parties. This assumption derives from pluralist conflict theory, according to which participants may differ in power or in strategic skill, for example, but only along a single dimension (see, e.g., Galanter, 1974). The differences in power are capable of being equalized: more money, more knowledge, more organization, even more experience, may be given to the weaker party, and then the differences would disappear. In other words, the differences between the parties according to pluralist conflict theory are quantitative and therefore one-dimensional; qualitatively the parties are identical. This again reflects legal ideology in which organizations are treated as "persons" for adjudicative purpose. (p. 380)

Cain and Kulcsar (1982) are not opposed to efforts to equalize the chances of the weaker parties, but they believe that closer documentation of the qualitative differences between organizations and individuals in modern society would lead to more effective reforms. This study of small claims court has focused more on individual than on business litigants. Study of the structure of business organizations and the attitudes of their members is also needed.

As I hope this study has shown, courts in the United States are a rich, and largely untapped, research setting for anthropologists. They yield valuable information not only on law and dispute settlement, but on society and its values in a more general sense. Courts are furthermore a useful barometer of social continuity and change. The anthropologist also has a contribution to make to studies of the court. By examining a court first hand, concentrating on understanding it from the points of view of all the participants, the anthropologist is able to see areas of stress both within the institution and between the institution and the litigants. The anthropologist is then able to make recommendations to mitigate some of these problems.

GLOSSARY

Affidavit - A voluntarily written statement taken under oath before a notary public or an officer of the court.

Answer - The defendant's written response to the plaintiff's complaint. Answers are not required in the summary (i.e. small) claims section of the Leon County court, but are required in the regular civil section (i.e., claims over \$1500).

Arbitrator - A disinterested person chosen by the parties to resolve a dispute between them. The arbitrator's decisions are binding, but arbitrators are not bound by rules of law or equity, but by their own discretion.

Bailment - Delivery of personal property or of goods by one individual to another. In a bailment for mutual benefit, one individual is compensated for the benefits resulting from the bailment. For example, if an automobile is taken to a shop for repair.

Bankruptcy - Inability of person to pay his debts; more specific legal definition is the legal process specified by the federal Bankruptcy Act. Plaintiffs in small claims court usually drop their suit if the defendant is in the process of bankruptcy, because there is little chance they will be able to collect.

Black Codes - Body of rules and statutes in effect in the South to enforce the segregation of blacks and whites.

Burden of Proof - The responsibility of a party to substantiate an allegation or issue in order to avoid dismissal of the issue early in a trial or to convince the judge of the validity of the claim. In small claims court the judges frequently ruled for the defendant because the plaintiff had "not carried his burden proof."

Civil Procedure - Body of law encompassing methods, procedures, and practices in litigation entailing private wrongs as opposed to criminal wrongs. There are state and federal rules of civil procedure. In Florida, some of the rules of civil procedure, such as the rules of evidence, apply to small claims courts.

Common Law - Body of principles or rules of action derived from either custom or from judgments and decrees of the courts as distinguished from enactments of legislatures.

Conditional Judgment - Determination issued by a court whose force depends on performance of specific acts by one the parties. Conditional judgments issued by small claims court require the defendant to make installment payments of a

specified amount at a specific time in order to avoid the issuance by the court of a final judgment.

Continuance - Postponment by the judge of a court case, usually at the request of one of the parties.

Cause of Action - A legitimate (from a court's point of view) claim in law and fact.

Contract - Promise or set of promises, the breach of which may be remedied by a court.

Consideration - The inducement for a contract--the price or other motive that causes each of the parties to enter into a contract.

Contempt of Court - An act considered by the judge to obstruct or interfere with the orderly and dignified administration of justice.

Corporation - A legal entity completely separate from the individuals who comprise it. Corporations are considered artificial persons by the courts and may own and sell property, sue and be sued, just as natural persons may. However, individual corporate officers may not be sued for the corporation's debts. Doing so was a common error observed in the Leon County court.

Counter Claim - Assertion by the defendant of cause of action against the plaintiff. In instances of counter claims, the court hears two suits: one by the original plaintiff against the defendant and one by the defendant (plaintiff in the countersuit) against the plaintiff (defendant in the countersuit).

Cross Claim - Action brought by one coparty against another coparty in a suit.

Damages - Money awarded by the court to a person who has been injured by the action of another.

Day - short for "day in court," which is the opportunity given to a person to present or defend his claim in court.

Default - Type of judgment entered for the plaintiff by the court when defendant fails to appear in court. A final judgment for the amount of the claim is issued on presentation of "proof of debt" (e.g., signed loan form, bill).

Directed Verdict - In civil proceedings either party may receive a directed verdict from the judge if the opposing party fails to present a valid or credible case or fails to present a required defense. The directed verdict is requested by one of the parties and if granted by the judge, it signals the end of the court case.

Discovery - The pretrial procedures, such as interrogatories and depositions, used by one party to gain information about the case from the other party.

Dismissal with Prejudice - Cancellation of the case that prevents the party from further legal action; usually based on the merits of the case, but in Leon County small claims court, cases are also dismissed with prejudice if the plaintiffs fail to appear in front of the court on two occasions.

Dismissal without Prejudice - Also a cancellation of the case, but does not prevent the party from filing another suit on the same issue.

Equity - The administration of justice based on fairness from the judge's point of view instead of on the strictly formulated rules of law.

Execution - Legal process of collecting judgment, includes such practices as having the sheriff take and sell a person's property.

Expert Witnesses - Person who as a result of education or experience possesses superior knowledge of a subject.

Facts - An actual occurrence. The judges in small claims court described their job as "finding the facts and applying the law."

Final Judgment - Type of judgment entered by the court that signals the end of a law case by declaring the winner and the amount of recovery. Collecting the judgment is the individual winner's responsibility.

Garnishment - A procedure specified by statute whereby a person's money, property, or credits are taken and applied to payment of his debt. In Florida there are many limitations placed on garnishment; for example, the head of the household's wages can not be garnished.

Hearsay Evidence -- Evidence of a statement made by someone other than the person testifying.

Interrogatories - A discovery device consisting of a series of written questions sent by one party to the other party.

Judgment - The official decision of a court of law.

Justice of the Peace - An inferior ranked judicial magistrate with jurisdiction over minor civil and criminal matters. Justices of the peace headed county courts in colonial days, but have gradually been replaced by law school trained judges. The justice of the peace system was abolished in Florida in the 1950s. The justice of the peace heard cases now heard by small claims court judges.

Justiciable - Controversy appropriate for a court of law.

Liability - Broad legal term includes all types of responsibilities and obligations.

Lien - An encumbrance upon property which prevents a person from selling it. A court judgment may be used as a lien against a person's property.

Mediator - Person who attempts to reconcile parties. In contrast to an arbitrator or a judge, the decision of the mediator is not binding on the parties.

Motion - Application made to a court in order to obtain a rule from the court in favor of the applicant. For example, in small claims court, motions may be filed to set aside a default. Hearings on motions are held in front of the judge.

Oath - Pledge made by a person in court to tell the truth. Oaths are usually dispensed with in small claims court.

Order - Written direction from a court or a judge.

Proprietorship - A business, usually unincorporated, controlled and owned by one person.

Promissory Note - Written promise to pay a specified amount at a specified time.

Proof of Debt - Establishment by a creditor (for example, by presentation of a bill or loan note) of his claim before a judgment is granted.

Pro se - In his own behalf; appearing on one's own (without a lawyer) in court.

Punitive Damages - Damages awarded above amount of actual damages as a means of punishing a wrongdoer; to be awarded only in rare cases of malicious and willful misconduct.

Referee - A person appointed by the court to take testimony, to determine issues of fact, and to report findings to the court.

Rules of Evidence - Rules detailing the accepted means for establishing or disproving any alleged matter of fact; includes testimony of witnesses, and introduction of records, documents, and exhibits.

Set Aside - To revoke, cancel, or reverse an order or a judgment.

Service of Process - The delivery of writs and summonses to the party named on the summons or writ.

Subpoena - Command to appear to give testimony at a certain time and place.

Substantive Law - Law of rights and duties (such as contract law, criminal law, tort law) as opposed to the law of procedure.

Summary - An immediate, short, and concise proceeding.

Summons - Written notification of the commencement of a civil action.

Special Master - A person appointed to act as a representative of the court.

Stipulation - A requirement in an agreement. Attorneys will frequently stipulate what one party must do (e.g. pay \$500) in order for the other party to dismiss the suit.

Testimony - A particular kind of evidence characterized by witnesses speaking under oath in a court.

Torts - A private wrong or injury (except breach of contract) for which the injured party may sue the injuring party and receive damages.

Venue - Refers to proper place or places for trial of a suit.

Voluntary Nonsuit - Instance when plaintiff abandons his case and agrees that the judgment should go against him for costs.

Witness - A person whose testimony is received as evidence for any purpose.

Writ - An order from the court requiring performance of a specific act. For example, a writ of garnishment may be issued by the court at the request of a person who has received a judgment to garnish the pay of the person the judgment has been issued against.

APPENDIX A
CASE STUDY SUMMARIES

Hasan Abdul v. Harry Clay

Hasan Abdul, a young Iranian university student, brought a \$53 suit against his former roommate, Harry Clay, a thirtyish black university student, for payment of phone and utility bills. At the pretrial, Mr. Clay admitted he owed the \$23 phone bill. A trial was held over the remaining \$30 for the utility bill. At the trial, Mr. Clay said he always paid all his bills. He also brought up a number of other issues considered irrelevant by the judge: Mr. Abdul's white girlfriend, Mr. Abdul's having slashed his tires. Mr. Abdul said Mr. Clay could not have paid the bill while he still lived in the apartment because the bill did not come until the next month. The judge believed Mr. Abdul and issued a final judgment in his favor. Several days later, Mr. Clay came by Mr. Abdul's apartment and gave him a check for the amount of the judgment.

Lloyd and Rose Cole v. Brian White
d/b/a White's TV Service

Lloyd and Rose Cole brought suit against Brian White d/b/a White's TV Service for \$306.95, the cost to replace their TV which was stolen from White's TV Service. Mrs. Cole and an attorney representing Mr. White were present at the pretrial hearing. They said they were unable to resolve the case, and the judge set the case for trial. At the trial, the attorney cited legal principles to show why his client should not have to pay for the set. The judge agreed with the attorney that the defendant was not liable, basically because the defendant had not been negligent in the care he had given the plaintiffs' TV: The defendant had locked the building. The thief had broken in by throwing a brick through the window. The judge issued a final judgment for the defendant.

Susan Coleman and Heidi Span v. Lakebreeze Apartments

Susan Coleman and Heidi Span, two young white, single working women, sued Lakebreeze Apartments for \$751 in damages as a result of an alleged breach of promise by the manager of Lakebreeze, i.e. to rent an apartment to the women. They contended that the manager had rented to someone else the apartment promised to them resulting in, Coleman and Span had incurring \$751 worth of expenses, including additional rent (\$275), cable for television (\$31), cable service (\$180), storage of furniture (\$217) and time off from work (\$45). They were represented by an attorney as was the apartment complex. The judge ruled in plaintiffs' favor, but granted them \$300 worth of damages instead of the requested \$751. The judge considered the additional rent and court costs to be the only legitimate damages. He reasoned that the other costs were not directly caused by Lakebreeze.

Billy Frank Evans v. Cathy Davis Smith

Bill Frank Evans, a young, white high school graduate, brought suit against Cathy Davis Smith, a young, unemployed white mother of three for \$661 in damages from a car accident. Mr. Evans had parked his restored 1968 Mercury Cougar outside of a bar. Ms. Smith left the bar after a fight with her boyfriend and while pulling out of the parking lot, hit Mr. Evan's car. The police were called and she was arrested for driving while intoxicated. She did not have any insurance. Mr. Evans had tried and failed to collect any money from her to repair his car. He called the office of the state insurance commissioner and was told that the only thing he could do was to sue the woman in small claims court. A settlement occurred during the pretrial hearing in front of the judge: Mr. Evans agreed to accept Ms. Smith's car in lieu of the money for the damage

to his car. Mr. Evans had hoped to get some money from the sale of Ms. Smith's car to repair his car, but during an interview he said the car "was a piece of junk and nobody wanted it."

Bob Hodge v. Ken Searcy

Bob Hodge, a young, white blue-collar worker with a wife and a young child, sued Ken Searcy, an older white male, for \$517, the amount he paid Mr. Searcy for rebuilding his car's engine. Mr. Searcy, a member of management in the same company for which Mr. Hodge works, operates a car repair business "on the side." Mr. Searcy worked on Mr. Hodge's car shortly after, the engine "blew." Mr. Hodge contended the engine blew because Mr. Searcy tightened the push rods too tight, whereas Mr. Searcy, who had hired an attorney, contended that the engine blew because Mr. Hodge ran over a stick. The judge, reasoning that Mr. Hodge had failed to prove his case, ruled in favor of Mr. Searcy.

Bob Levy v. Myers Exterminators

Bob Levy, a young white university student, brought suit against Myers Exterminators for \$250, the cost to replace fish killed by an employee of Myers. Myers Exterminators was represented by its president, Mr. Myers. Levy lived in an apartment complex near the university and had told the apartment's manager not to allow the exterminator to spray his apartment because of his fish. The manager told the exterminator not to spray Mr. Levy's apartment, but he did so anyway. When Levy's girlfriend returned home and found that the apartment had been sprayed, she called Mr. Myers who agreed to pay for any fish that might die. The fish did, in fact, die, but Myers refused to pay for them. In court Mr. Levy called an owner of a fish shop as a witness who verified the cost of the fish. He also had the apartment manager testify that she had told the

employee from Myers not to spray Mr. Levy's apartment. The judge agreed with Levy that Myers should have to pay for the dead fish. Myers produced a check written out to Mr. Levy for \$250 and the judge dismissed the case.

Margaret Lewis v. Lenora Lewis

Margaret Lewis, a middle-aged black woman, brought suit against her sister-in-law Lenora Lewis for \$500 in nursing services she provided for Lenora's husband who had died before the case was filed. Margaret and Lenora had married brothers. Lenora Lewis was also a middle-aged black woman, but she appeared to be considerably older than Margaret. Lenora was in a wheelchair and her speech impaired by a stroke. She was represented by a white male attorney from the local legal aid office. Lenora did not deny that Margaret performed the work for her husband nor did she argue about the amount of the services. She told the judge she did not pay Margaret because she did not have the money. Her lawyer, however, argued that Lenora had never asked Margaret to nurse her husband, and thus she should not have to pay her. The judge ruled in Lenora's favor, but not for the reason presented by her attorney. Instead, he reasoned that because, under Florida law, the wife is not responsible for the funeral expenses of her husband, she should also not be held responsible for the expenses incurred during his final illness.

Home Lighting v. Massadourian

Mr. Marin, a middle-aged white male and owner of Home Lighting, brought suit against Mr. Massadourian, a middle-aged accountant of Armenian descent, for \$40, the cost of a lighting fixture. On a Friday, Mr. Massadourian and his wife purchased two lighting fixtures from Mr. Marin. They returned home and discovered that they only needed one of the fixtures so Saturday they went to Mr. Marin's store to return the fixture. The store was closed. They returned again on Tuesday. Because Monday was Veteran's Day, the

Massadourians assumed (incorrectly) that the store would be closed. On Tuesday, Mr. Marin refused to accept return of the fixture, telling Mr. Massadourian that items had to be returned within 24 hours of purchase and pointing out the sign posted in the store stating this policy. Mr. Massadourian responded by stopping payment on the check for the fixture. Mr. Marin countered by suing him for the amount in small claims court. The judge ruled in Mr. Marin's favor, reasoning that Mr. Marin was within his rights legally.

Peter Lombardi v. Mira Anderson

Peter Lombardi, a popular young attorney, brought suit against Mira Anderson, an expensively dressed and elaborately made-up middle-aged divorcee for \$765 in attorney's fees. Lombardi contended that he performed 36 hours of legal services for her, primarily in regard to a dispute with her ex-husband, a medical doctor, over an unpaid account at an expensive dress shop. The judge in this case decided that because Mrs. Anderson received all the benefits of the account (dresses, etc.), she was responsible for the bill. Mrs. Anderson was still working for her ex-husband when she went to see Mr. Lombardi. Mr. Lombardi warned her that her husband might fire her if she sued him. Dr. Anderson did, in fact, fire her and she then requested that Mr. Lombardi try to have her alimony increased since she no longer had a job. Meanwhile, Dr. Anderson engaged an attorney who took a deposition from Mrs. Anderson. According to Lombardi, Mrs. Anderson was "demolished in the deposition," and he told her she ought to reconsider the case. He never saw her again. He filed suit when she failed to pay his bill. Mrs. Anderson contended she failed to pay Mr. Lombardi because he had not told her about the "big interest" that was accumulating on the dress shop bill. The judge ruled in Mr. Lombardi's favor.

Jim McKay v. Best Employment Service

Jim McKay, a large man of Irish descent in his sixties, sued Best Employment Service, a well-known national employment agency, for \$300 he had paid them in fees. Best Employment hired an attorney who filed a countersuit for \$450. McKay, an unemployed accountant, went to Best Employment and was told they would find him a job commensurate with his education and experience. He accepted a job which turned out, in his mind, to be a nightmare: none of the people in the office got along and he was forced to do the unpleasant task of straightening out the messes created by other members of the office. Within days of accepting the job, he told Best Employment that the job was unacceptable. Within weeks he quit. Best Employment contended he still had to pay them the remainder of their fee (\$450), but he refused. Best turned the case over to a collection agent who repeatedly called McKay and threatened him with legal action if he did not pay. Angry as a result of these phone calls, Mr. McKay filed suit against Best Employment for the \$300 he had already paid. After the pretrial hearing, at which Best Employment's attorney was present, Mr. McKay hired an attorney, who urged him to drop the case. The attorney began negotiations with the attorney for Best Employment. Neither McKay nor his attorney appeared at the final hearing so the judge issued a judgment in favor of Best Employment on the counterclaim and dismissed the original claim filed by Mr. McKay. However, after the hearing the two attorneys in the case reached a settlement and McKay paid Best Employment \$200 instead of \$450.

Linda Miner v. Beatrice Melton

Linda Miner, a young black woman, brought suit against Beatrice Melton for \$221 worth of damages as a result of a car accident. Beatrice Melton's car hit the back of Linda Miner's car on a busy street during a heavy late afternoon

thunderstorm. Mrs. Melton called her husband who arrived shortly after the accident and helped Ms. Miner to start her car and to open her trunk. The police were also called, but, apparently because of the weather, no one was given a citation. The Meltons gave Ms. Miner the name of their insurance company, but Ms. Miner, and her mother, called the company repeatedly and were told that the Meltons did not have insurance with them. After these calls, Ms. Miner filed suit in small claims court. Mr. and Mrs. Melton argued during the trial that they should not have to pay because no one received a ticket in the accident. They also thought the amount of the damages was too high. The judge agreed with the second point, but ruled in favor of Ms. Miner, granting her \$98 instead of \$221 in damages.

Harry Norris v. International Motors

Harry Norris, a young black male, brought suit against International Motors for \$500 in car repairs. Two weeks after International worked on his car, a rod broke in the engine. International was represented by its vice president, Ben Slate, a middle-aged white man. Although Mr. Norris was suing International for \$500, he had never paid them. He gave them a check, which bounced, although he contended that he had stopped payment on it. Mr. Slate stated that he had told Mr. Norris when he brought the car to his shop that the engine needed a major overhaul, but Mr. Norris declined to have the work International thought was necessary done. According to Mr. Slate, the rod broke because Mr. Norris had not agreed to allow International to completely repair the engine. Mr. Norris contended that the engine rod broke because International had not properly installed the oil seals. The judge ruled in International's favor, arguing that Mr. Norris had not proven negligence on the part of International.

John Pappas v. Auto Works

John Pappas, a young white state worker of Greek descent, brought suit against Auto Works for \$375 worth of damage to his convertible's top. Auto Works was represented in court by its owners, Mr. and Mrs. Kelly, a middle-aged white couple with strong southern accents. Mr. Pappas contended that his car's top was damaged when Auto Works replaced the car's carpet. The Kellys contended that the roof was already damaged when Mr. Pappas brought the car to the shop. They also produced witnesses who said that because of the structure of the roof frame on cars like Mr. Pappas's the top tears after a certain length of time. The judge agreed with this explanation and ruled in favor of Auto Works, adding that the plaintiff had not proven any negligence on the part of Auto Works.

Cody Revell v. Susan Revell

Cody Revell, a young white male, brought suit against Susan Revell, a young white female, his ex-wife, for \$1,100, the amount he had paid on a loan. She countered with a suit for \$600, the amount she had paid on the loan. Ms. Revell was represented by an attorney; Mr. Revell was not. Both litigants argued that the other should be liable for the loan. The judge ruled that both had signed the loan and both were therefore liable. He ruled for Mr. Revell. However, he only granted him half of the amount he requested. To the surprise of both the observer and the defendant's attorney, the judge did not give credit to Ms. Revell for the amount she had paid. When questioned by the attorney, the judge failed to give a satisfactory explanation for his decision. The attorney threatened to appeal but never did, possibly because both he and the defendant had come to court from Central Florida.

Cassandra Richey v. Linda Ray

Cassandra Richey, a young black female, brought suit against Linda Ray, another young black female and coworker, for \$99, the amount of money Richey had lent Ray. Ms. Ray had requested the money in order to move out of the apartment she shared with her boyfriend. Ms. Ray told Ms. Richey that her boyfriend repeatedly beat her. Ms. Ray did not leave her boyfriend and she did not repay Ms. Richey. At the pretrial she admitted owing the plaintiff the money, but said she could not pay back the whole amount at one time. Ms. Richey did not want to accept payments from her, so the judge asked them to step into the hallway to talk. According to Ms. Richey, once in the hall, Ms. Ray's boyfriend began to harrass her, telling her that Linda did not have to pay her back. Ms. Richey returned to the courtroom and was given a trial date. Ms. Ray did not appear for the trial. Thus, the judge issued a default and final judgment for Ms. Richey.

Betty Smith v. Russell Weeks

Betty Smith, a large unattractive black woman, brought suit against Russell Weeks, a younger black male, for \$40 in rent. Ms. Smith contended that Mr. Weeks owed her four-nights' rent; Mr. Weeks contended that he had paid her. Ms. Smith brought her two daughters to testify, but the judge thought they were only saying what their mother had told them to say. He did not believe Ms. Smith had proved her case and thus ruled in Mr. Weeks's favor.

Reba Snow v. Brian Bryan

Reba Snow, a young black university student, brought suit against Brian Bryan, a young white guitar instructor for \$50, the cost of a guitar she purchased from Mr. Bryan. Shortly after purchasing the guitar, Ms. Snow was told by her guitar teacher, an acquaintance of Mr. Bryan's, that the guitar was worthless. She tried to return the guitar to Mr. Bryan, but he refused to refund

her money. Ms. Snow cited a Florida statute, which states that a guitar dealer must give a refund if it is requested within 7 days unless the dealer posts a sign stating that no refunds are given. Mr. Bryan argued that he was a guitar instructor, not a guitar dealer. Ms. Snow countered with a copy of an advertisement for his guitars in a local paper and with his business card. The judge agreed with Ms. Snow and issued a judgment in her favor for \$50.

Rose Stephens v. Dan Campbell d/b/a/ Auto City

Rose Stephens, a sixtish white female with a fourth grade education, brought suit against Dan Campbell, a young white male, for failing to honor a coupon for a free oil change. She sued him for \$36, the amount she had paid for a book of coupons offering discounts or free services from local businesses. She contended that she went to Mr. Campbell's shop twice and he refused to change her oil. During the hearing Mr. Campbell explained why he did not honor the coupon. He said the person who put together the booklet came to him and said the booklet would bring him business. He was also told that only 1,500 booklets would be printed, but later he was told 3,000 had been sold. When Mrs. Stephens arrived he had already honored several hundred coupons and decided he was not going to honor any more. The judge ruled in Campbell's favor, explaining to Mrs. Stephens that "under contract law, this is a third party beneficiary contract between Auto City and this [the coupon] company. For the contract to be binding on Auto City, Auto City would have either had to pay or to receive money in return." The judge continued with a suggestion that Mrs. Stephens either sue the coupon salesman or talk to someone in the Attorney General's office about the possibility of fraud on the part of the coupon salesman. The judge gave her the name of a person to see in the Attorney

General office. After court, she went to see this person, but was told there was nothing they could do. According to Mrs. Stephens, the person didn't even know why the judge had sent her.

Tallahassee Chemicals v. David Howard, d/b/a/ Quick Clean

Tallahassee Chemicals, a small, locally owned and operated corporation brought suit against David Howard, a Sarasota businessman and attorney, for \$593 worth of goods. Steve Conrad, vice-president of Tallahassee Chemicals, was represented by Bill Bales, a local attorney of questionable reputation. Conrad claimed David Howard was responsible for payment of goods delivered to a local truck stop for use by Quick Clean. Howard objected, essentially arguing that Quick Clean was a corporation and that he was thus not personally responsible for debts accrued by the corporation. The judge agreed with him and the plaintiffs' attorney agreed to accept a voluntary dismissal of the case. Tallahassee Chemicals did not file another case against Quick Clean, Inc. because the corporation was undergoing bankruptcy.

Top Rate Ice v. Don Hsu's, Panhandle Builders, and John Benson

Elizabeth Dewey, treasurer and secretary, of Top Rate Ice a local corporation, brought suit against Don Hsu's , a locally owned and operated Chinese restaurant; Panhandle Builders, a local contractor, and John Benson, a local architect, for \$413 in services rendered at Don Hsu's. John Benson's attorney filed a cross-claim against Panhandle Builders, claiming any liability Benson might have resulted from "action or lack of action" by Panhandle Builders. Meanwhile Panhandle Builders filed a cross-claim against Don Hsu's and John Benson. The plaintiff failed to show up at the final hearing so the judge dismissed the case with prejudice.

John Vine v. Robert Wood

John Vine, a middle-aged black businessman sued Robert Wood, a black self-proclaimed hog farmer and contractor, for \$650, the amount he had given Mr. Wood to repair the roof on one of his rental houses. Mr. Wood was represented by an attorney; Mr. Vine was not. Mr. Wood apparently began the job, but only worked four or five days. Mr. Vine waited for several months for Mr. Wood to complete the job before he finally hired another man finish the job. The judge ruled in Mr. Vine's favor, but only granted him \$200, reasoning that Mr. Wood should be paid for the work he did.

Daniel and Janet Walters v. Bob Charles

Daniel and Janet Walters, a middle-aged white couple, sued Bob Charles, a young white salesman, for \$625 in damages as the result of a car accident. Mr. Charles was represented by a family friend, a prominent local attorney, whereas the Walters were unrepresented. The Walters contended that Mrs. Walters was beginning to back out of a parking space in front of her daughter's apartment when Mr. Charles sped around the corner and hit her car. Mr. Charles's version was that Mrs. Walters backed into his car. At the hearing Mr. Charles's lawyer requested the case be decided in his client's favor because Mr. Walters, by not having subpoenaed a mechanic, had failed to prove damages. Mr. Walter had written estimates of the damages, but the attorney objected, contending such estimates were hearsay. The judge agreed with the defendant's attorney and issued a final judgement for the defendant.

APPENDIX B
RESEARCH INSTRUMENTS

PRETRIAL HEARING OBSERVATION FORM COVER SHEET

DATE:

JUDGE:

TIME:

COURTROOM:

CODES:

TYPE OF CASE

OUTCOME

01 bus. v. bus.	01 plaintiff by default
02 ind. v. ind.	02 dismissed (no plaintiff)
03 bus. v. ind.	03 set for trial
04 ind. v. bus.	04 final judgment for plaintiff
05 utility/phone co. v. ind.	05 conditional judgment for plaintiff
06 utility/phone co. v. bus.	06 continuance
07 gov. ag. v. ind.	07 resolved through negotiation in hall
08 gov. ag. v. bus.	08 sent to negotiate (did not return during course of hearing)
09 landlord v. tenant	09 resolved prior to hearing
10 tenant v. landlord	
11 doctor/dentist v. ind.	
12 attorney v. ind.	
13 ind. v. doctor/dentist	
14 ind. v. attorney	

Opening remarks by judge and general observations of courtroom:

350
PRETRIAL HEARING OBSERVATION FORM

Docket # _____

Date: _____

NAMES AND ADDRESSES OF LITIGANTS:

Plaintiff:

Defendant:

Type of Case	Outcome	Amount	Item
--------------	---------	--------	------

2. Plaintiff

yes male black
no female white
Other: _____

Appearance (dress, grooming,
approximate age): _____

3. Defendant

yes male black
no female white
Other: _____

Appearance (dress, grooming,
approximate age): _____

4. Attorney

yes male black
no female white
Other: _____

Appearance (dress, grooming,
approximate age): _____

5. Attorney

yes male black
no female white
Other: _____

Appearance (dress, grooming,
approximate age): _____

Interaction (judge = 1):

351
TRIAL OBSERVATION FORM

Date: _____	Judge: _____
Time: _____	Location: _____
Case Number: _____	Type of Case: _____
Item: _____	Amount: _____

Location of Participants: _____

2. Plaintiff

yes	male	black
no	female	white
Other: _____		

Appearance (dress, grooming,
approximate age): _____

Deportment and Demeanor:

Language:

4. Attorney

yes	male	black
no	female	white
Other: _____		

Appearance (dress, grooming,
approximate age): _____

3. Defendant

yes	male	black
no	female	white
Other: _____		

Appearance (dress, grooming,
approximate age): _____

Deportment and Demeanor:

Language:

5. Attorney

yes	male	black
no	female	white
Other: _____		

Appearance (dress, grooming,
approximate age): _____

(make sure to note witnesses also)

INTERVIEW GUIDE

DEFENDANTS WHO GO TO TRIAL

Docket #: _____ Case Type: _____

Defendant's Name: _____ Plaintiff's Name: _____

Address: _____ Address: _____

Date of Interview: _____ Place of Interview: _____

Time: Beginning: _____ End: _____

I. Introduction Checklist

1. Restate purpose: "I'm interested in learning about small claims court."
2. Assure anonymity and confidentiality.
3. Assure that there are no right or wrong answers: "I'm only interested in your opinions and personal experiences."
4. Ask permission to take notes or to tape record: "I'd like to write some of this down [or tape record] so that I can go over it later. Is that OK?"

II. Case/Litigant Data

1. Item _____

2. Amt: _____

3. Outcome: _____

"I'd like to ask you some facts about yourself."

4. Sex _____

5. Marital status ("Are you married?") _____

6. Age ("What is your age?") _____

7. Education ("How many years of schooling have you completed?") _____

8. Race or ethnicity _____

9. Place of birth ("Where were you born?") _____

10. Occupation ("What is your occupation?") _____

11. Occupation of spouse (if applicable) ("What is your husband's/wife's occupation?") _____

III. Description of the Dispute

1. Explain observed trial "so I am familiar with the outline of the case."
[Review] Ask "Is there anything that you didn't say during the trial that you would like to express?"

Question Examples:

- a. Time of original incident?
- b. Whether the defendant heard from the plaintiff before receiving notice from the court. If so, what happened during these meetings or conversations? Did you contact the plaintiff?
- c. Steps defendant took to resolve the problem. For example, "Did you ask anyone for help? Did you call or see a lawyer? How did you select a lawyer? What advice did lawyer give?"

IV. Relationship to Plaintiff

1. How long have you known [plaintiff's name] ?
2. Did you know [plaintiff's name] before [specific dispute] ?
3. Do you expect to continue to see [or continue to do business] with [plaintiff's name] ?

V. Feelings About the Court

1. Had you been to small claims court or any court before?
2. What happened during pretrial?
3. Questions concerning hearing.
 - a. How did you prepare for hearing?
 - b. Did you feel comfortable?
 - c. Was the judge helpful?
 - d. Were you given a fair chance to present your side of the case?
 - e. Was what went on in court clear to you?
4. Were you satisfied with the outcome of the case? (What are you going to do now?)

VI. "Practical" Questions

1. How much time did you spend going to court?
2. Did you have to take time off from work?
3. Did you have to pay lawyer's or court costs? How much?
4. Were the papers you received from the court easy to understand?

VII. Reform

1. Do you think the court should be changed in any way?

VIII. Dispute Handling in General

1. Would you take a person to small claims court? (If yes, for what reasons? If no, what would you do if, for example, you felt someone owed you money?)

(ask any fact questions not answered during course of interview)

INTERVIEW GUIDE

PLAINTIFFS WHO GO TO TRIAL

Docket #: _____

Case Type: _____

Plaintiff's Name: _____

Defendant's Name: _____

Address: _____

Address: _____

Date of Interview: _____

Place of Interview: _____

Time: Beginning: _____

End: _____

I. Introduction Checklist

1. Restate purpose: "I'm interested in learning about your experience with small claims court."
2. Assure anonymity and confidentiality.
3. Assure that there are no right or wrong answers: "I'm only interested in your opinions and personal experiences."
4. Ask permission to take notes or to tape record: "I'd like to write some of this down [or tape record] so that I can go over it later. Is that OK?"

II. Case/Litigant Data

1. Item _____

2. Amt: _____

3. Outcome: _____

"I'd like to ask you some facts about yourself."

4. Sex _____

5. Marital status ("Are you married?") _____

6. Age ("What is your age?") _____

7. Education ("How many years of schooling have you completed?") _____

8. Race or ethnicity _____

9. Place of birth ("Where were you born?") _____

10. Occupation ("What is your occupation?") _____

11. Occupation of spouse (if applicable) ("What is your husband's/wife's occupation?") _____

III. Description of the Dispute

1. Explain observed trial "so I am familiar with the outline of the case."
[Review] Ask "Is there anything that you didn't say during the trial that you would like to express?"

Question Examples:

- Time of original incident?
- Whether the plaintiff contacted the defendant before filing claim. If so, what happened during these meetings or conversations?
- Steps plaintiff took to resolve the problem. For example, "Did you ask anyone for help? Did you call or see a lawyer? How did you select a lawyer? What advice did lawyer give?"
- When did you decide to file in small claims court.

IV. Relationship to Plaintiff

- How long have you known [defendant's name] ?
- Did you know [defendant's name] before [specific dispute] ?
- Do you expect to continue to see [or continue to do business] with [defendant's name] ?

V. Feelings About the Court

- Had you been to small claims court or any court before?
- What happened during pretrial?
- Questions concerning hearing.
 - How did you prepare for hearing?
 - Did you feel comfortable?
 - Was the judge helpful?
 - Were you given a fair chance to present your side of the case?
 - Was what went on in court clear to you?
- Were you satisfied with the outcome of the case? (What are you going to do now?)
- (if relevant) Have you collected judgment? Did you have any problems?

VI. "Practical" Questions

- How much time did you spend going to court?
- Did you have to take time off from work?
- Did you have to pay lawyer's or court costs? How much?
- Did you have any difficulty filling out the claim form? Was the clerk helpful?

VII. Reform

- Do you think the court should be changed in any way?

VIII. Dispute Handling in General

- Would you use small claims court again? Under what circumstances?

(ask any fact questions not answered during course of interview)

CASE FILES FROM 1979

NAMES AND ADDRESSES OF LITIGANTS

Plaintiff:

Defendant:

1-4 	1. DOCKET NUMBER	15-16 	6. JUDGE 01 Atkinson 02 McClamma 03 McClure -3 N/A (unable to serve) -9 Missing Other: _____
5-6 	2. TYPES OF CASES 01 business v. business 02 individual v. individual 03 business v. individual 04 individual v. business 05 utility/phone co. v. individual 06 utility/phone co. v. business 07 governmental agency v. individual 08 governmental agency v. business 09 landlord v. tenant 10 tenant v. landlord 11 doctor/dentist v. individual 12 attorney v. individual 13 individual v. doctor/dentist 14 individual v. attorney -9 Missing Other: _____	17-18 	7. BUSINESS SCOPE (PLAINTIFF) 01 local 02 regional 03 national -3 N/A -9 Missing
7-8 	3. ITEM IN DISPUTE (specify): _____	19-20 	8. BUSINESS SCOPE (DEFENDANT) 01 local 02 regional 03 national -3 N/A -9 Missing
9-12 	4. AMOUNT OF CLAIM	21-22 	9. BUSINESS TYPE (PLAINTIFF) 01 retail 02 wholesale 03 service -3 N/A -9 Missing Other: _____
13-14 	5. WINNER 01 plaintiff 02 plaintiff by default 03 defendant 04 none (dismissed) 05 none (continuance) 06 none (unable to locate defendant) -9 Missing Other: _____	23-24 	10. BUSINESS TYPE (DEFENDANT) 01 retail 02 wholesale 03 service -3 N/A -9 Missing Other: _____

DOCKET
NUMBER:

25-26 11. FRANCHISE (PLAINTIFF)

☐ 01 yes
☐ 02 no
-8 N/A
-9 Missing

27-28 12. FRANCHISE (DEFENDANT)

☐ 01 yes
☐ 02 no
-8 N/A
-9 Missing

29-30 13. ATTORNEY FOR PLAINTIFF

☐ 01 yes
☐ 02 no
-9 Missing

31-32 13. ATTORNEY FOR DEFENDANT

☐ 01 yes
☐ 02 no
-9 Missing

33-34 15. SEX OF PLAINTIFF (if business, sex of representative)

01 male
02 female
03 married couple
-8 N/A (business represented by attorney only)
-9 Missing
Other: _____

35-36 16. SEX OF DEFENDANT (if business, sex of representative)

01 male
02 female
03 married couple
-8 N/A (business represented by attorney only)
-9 Missing
Other: _____

37-38 17. SEX OF PLAINTIFF'S ATTORNEY

01 male
02 female
-8 N/A
-9 Missing

39-40 18. SEX OF DEFENDANT'S ATTORNEY

01 male
02 female
-8 N/A
-9 Missing

41-42 19. COLLECTION OF JUDGMENT

☐ 01 yes
☐ 02 no
-8 N/A
-9 Missing

43-48 20. DATE OF ORIGINAL INCIDENT

(Mo., day, year)

49-54 21. DATE OF FILING

(Mo., day, year)

55-60 22. DATE OF FIRST HEARING

(Mo., day, year)

61-66 23. DATE OF JUDGMENT

(Mo., day, year)

67-68 24. TYPE OF JUDGMENT

☐ 01 Final
☐ 02 Conditional
-8 N/A
-9 Missing

69-70 25. TRIAL

☐ 01 yes
☐ 02 no
-9 Missing

COMMENTS:

REFERENCES CITED

- Abel, Richard L.
1973 A Comparative Theory of Dispute Institutions in Society. *Law and Society Review* 8:217-347.
- Adams, Richard N.
1977 Power in Human Societies: A Synthesis. In *The Anthropology of Power*. Raymond D. Fogelsen and Richard N. Adams, eds. pp. 387-410. New York: Academic Press.
- Aldisert, Ruggero J.
1976 *The Judicial Process*. St. Paul, Minn.: West.
- Alper, E.E.
1934 Practice in the Small Claims Court of the City of New York. *St. John's Law Review* 9:247-250.
- American Bar Association
1978 Report on the National Conference on Minor Dispute Resolution. Prepared by Frank E.A. Sander.
- Anon.
1918 Informal Procedures in Chicago. *Judicature* 2:23-26.
- Anon.
1920 Small Claims Courts in the U.S. *Columbia Law Review* 20:901-909.
- Arensberg, Conrad M.
1965 American Communities. In *Culture and Community*. Conrad M. Arensberg and Solon T. Kimball, eds. pp. 97-116. New York: Harcourt, Brace and World, Inc. (orig. published 1955).
- Arensberg, Conrad M., and Solon T. Kimball.
1965 *Culture and Community*. New York: Harcourt, Brace, Jovanovich.
- Aubert, Vilhelm
1966 Some Social Functions of Legislation. *Acta Sociologica* 10:98-120.
- 1969 Law as a Way of Resolving Conflicts: The Case of a Small, Industrialized Society. In *Law in Culture and Society*. Laura Nader ed. pp. 282-303. Chicago: Aldine.

- Austin, Scott
1923 Small Claims and Poor Litigants. *American Bar Association Journal* 9:457-459.
- Bailey, F.G.
1960 *Tribe, Caste, and Nation*. Manchester: Manchester University Press.

1969 *Strategems and Spoils: A Social Anthropology of Politics*. New York: Schocken Books.
- Barton, R.F.
1919 Ifugao Law. *University of California Publications in American Archaeology and Ethnology* 15(1):1-186.
- Barth, F.
1966 *Model of Social Organization*. London: Royal Anthropological Institute.
- Becker, Howard S.
1968 Social Observation and Social Case Studies. In *International Encyclopedia of the Social Sciences*. David Sills, ed. pp. 232-238. New York: Macmillan.
- Bell, Griffin B.
1978 New Directions in the Administration of Justice: Response to the Pound Conferences--Responses of the Justice Department. *American Bar Association Journal* 64:53.
- Berkson, Larry, and Steven W. Hays
1976 Court Clerks: The Forgotten Politicians. *University of Miami Law Review* 30 (Spring):488-516.
- Black, Donald
1976 *The Behavior of Law*. New York: Academic Press.

1980 *The Manners and Customs of the Police*. New York: Academic Press.
- Black, Henry Campbell
1979 *Black's Law Dictionary*. St. Paul, Minn.: West Publishing Company.
- Black, Mary, and Duane Metzger
1969 Ethnographic Description and the Study of Law. In *Cognitive Anthropology*. Stephen Tylor, ed. pp. 165-187. New York: Holt, Rinehart and Winston.
- Blumberg, Abraham S.
1967 *Criminal Justice*. Chicago: Quadrangle Books.
- Bohannon, Paul
1957 *Justice and Judgment Among the Tiv*. London: Oxford University Press.

- 1967 The Differing Realms of the Law. In *Law and Warfare*. Paul Bohannon, ed. pp. 43-56. Garden City, New York: Natural History Press.
- 1969 *Ethnography and Comparison in Legal Anthropology*. In *Law in Culture and Society*. Laura Nader, ed. pp 401-418 Chicago: Aldine.
- Boissevain, Jeremy
1974 *Friends of Friends: Networks, Manipulators and Coalitions*. Oxford: Basil Blackwell.
- Brickley, Stephen L., and Dan E. Miller
1975 *Bureaucratic Due Process: An Ethnography of a Traffic Court*. *Social Problems* 25(5):688-697.
- Bureau of the Census, U.S. Department of Commerce
1979 *Census Geography*. Washington, D.C.: Bureau of the Census.
- Cain, Maureen, and Kalman Kulcsan
1982 *Thinking Disputes: An Essay on the Origins of the Dispute Industry*. *Law and Society Review* 16(3):375-402.
- Caplovitz, David
1967 *The Poor Pay More*. New York: Free Press.
1974 *Consumers in Trouble: A Study of Debtors in Default*. New York: Free Press.
- Carlin, Jerome E.
1962 *Lawyers on Their Own*. New Brunswick: Rutgers University Press.
- Clayton, Nathan
1939 *Small Claims and Conciliation Courts*. *Annals of American Academy of Political and Social Sciences* 205:57-64.
- Clifton, James, ed.
1970 *Applied Anthropology*. Boston: Houghton-Mifflin.
- Cochran, Thomas C.
1972 *Business in American Life*. New York: McGraw-Hill.
- Collier, Jane
1973 *Law and Social Change in Zinacantan*. Stanford: Stanford University Press.
1975 *Legal Processes*. In *Annual Review of Anthropology*. Bernald Siegal, ed. pp. 121-144. Palo Alto: Annual Reviews, Inc.
1979 *Stratification and Dispute Handling in Two Highland Chiapas Communities*. *American Ethnologist* 6(2):305-328.

- Colson, Elizabeth
1953 Social Control and Vengeance in Plateau Tonga Society. Africa 23:199-212.
- Committee on Small Claims and Conciliation Proceedings
1924 Report of the Committee. American Bar Association Journal 10(11):828-832.
- Danzig, R., and Michael J. Lowy
1975 Everyday Disputes and Mediation in the U.S.: A Reply to Professor Felstiner. Law and Society Review 9:675-694.
- Dellinger, Robert William
1972 An Observational Study of Los Angeles Small Claims Court. M.A. Thesis, California State University at Los Angeles.
- de Waal Malefit, Anne Marie
1974 Images of Man. New York: Knopf.
- Dillard, J.L.
1972 Black English. New York: Vintage.
- Domanskis, Alexander
1976 Small Claims Courts: An Overview and Recommendation. University of Michigan Journal of Law Reform 9(3):590-619.
- Eckhoff, Torstein
1966 The Mediator, the Judge and the Administrator in Conflict Resolution. Acta Sociologica 10:158.
- Eddy, Elizabeth, and William Partridge, eds.
1978 Applied Anthropology in America. New York: Columbia University Press.
- Eisenstein, James, and Herbert Jacob
1977 Felony Justice. Boston: Little, Brown, and Company.
- Epstein, A.L.
1967 The Case Method in the Field of Law. In The Craft of Social Anthropology. A.L. Epstein, ed. pp. 205-231. London: Tavistock.
- Erickson, William H.
1978 The Pound Conference Recommendations: A Blueprint for the Justice System in the 21st Century. Federal Rules 76 (December):277.
- Evans-Pritchard, E. E.
1940 The Nuer. Oxford: Clarendon Press.
- Farris, Charles D.
1941 The Courts of Territorial Florida. Florida Historical Quarterly 19:346-367.

Feeley, Malcolm

1979 *The Process Is the Punishment*. New York: Russell Sage.

Felstiner, William

1974 *Influence of Social Organization on Dispute Processing*. *Law and Society Review* 9(1):63-94.

Felstiner, William, Richard Abel, and Austin Sarat

1980-81 *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming*. *Law and Society Review* 15(3-4):631-654.

Fernald, Edward A., ed.

1981 *Atlas of Florida*. Tallahassee: Florida State University Foundation.

Fine, Kerry Kenney

1978 *Small Claims Court: Democracy in America?* Ph.D. dissertation, Sociology Department, University of California, Riverside.

Florida Judicial Council

1956 *Improving Florida's Court System*. Tallahassee, Fla.

Forman, Sylvia

1972 *Law and Conflict in Rural Highland Ecuador*. Ph.D. dissertation, University of California, Berkeley.

Foster, George

1969 *Applied Anthropology*. Boston: Little, Brown.

Frake, Charles

1969 *Struck by Speech: The Yakan Concept of Litigation*. In *Law in Culture and Society*. Laura Nader, ed. pp. 147-167. Chicago: Aldine.

Friedman, Lawrence M.

1973 *A History of American Law*. New York: Simon and Schuster.

Friedman, L.M., and R.V. Percival

1976 *A Tale of Two Courts: Litigation in Alameda and San Benito Counties*. *Law and Society Review* 10(2):267-301.

Friedson, Eliot, ed.

1971 *The Professions and Their Prospects*. Beverly Hills: Sage.

Galanter, Marc

1974 *Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Charge*. *Law and Society Review* 9(1):95-160.

Garretson, Lucy R.

1976 *American Culture: An Anthropological Perspective*. Dubuque, Iowa: Wm. C. Brown.

Gertz, Marc G.

1977 Influence in Court Systems: The Clerk as Interface. The Justice System Journal 3 (Fall):30-37.

Gibbs, J.L.

1963 The Kpelle Moot: A Therapeutic Model for the Informal Settlement of Disputes. Africa 33:1-11.

Gibson, Robert E. (interview with)

1979 Why More Families Go Deeper in Hock. U.S. News and World Report 86:59.

Gluckman, Max

1955 The Judicial Process Among the Barotse of Northern Rhodesia. Manchester: Manchester University Press.

Goodenough, Ward

1965 Yankee Kinship Terminology: A Problem in Componential Analyses. American Anthropologist 67(part 2):259-87.

Greenhouse, Carol

1976 Conflict and Conflict Resolution in Jonesboro, Georgia. Ph.D. dissertation, Anthropology Department, Harvard University.

Grenstad, Nicolay

1918 Norway's Conciliation Tribunals. Judicature 2:9.

Gulliver, P.H.

1963 Social Control in an African Society. London: Routledge and Kegan Paul.

1969 Dispute Settlement without Courts: The Ndendeuli of Southern Tanzania. In Law in Culture and Society. pp. 24-68 Laura Nader, ed. Chicago: Aldine.

1971 Neighbors and Networks. Berkeley: University of California Press.

1973 Negotiation as a Mode of Dispute Settlement: Toward a General Model. Law and Society Review 7:667.

Hall, Edward T.

1976 Beyond Culture. Garden City, New York: Anchor Press.

HALT, Inc.

1976 Small Claims Court. Washington, D.C.: HALT, INC.

Harley, Herbert

1919 Justice or Litigation. *Virginia Law Review* 6:143-155.

Hays, Steven W.

1978 Court Reform. Lexington, Mass.: D.C. Heath and Company.

Hendel, David

1977 Selection of Sample Size. From AERA Mini Presentation.

Henry, Jules

1965 Culture Against Man. New York: Vintage.

Hill, Carole E.

1977 Anthropological Studies in the American South: Review and Directions. *Current Anthropology* 18(2):309-326.

Hoane, Arthur Joseph

1978 Strategems and Values: An Analysis of Plea Bargaining in an Urban Criminal Court. Ph.D. dissertation, Anthropology Department, New York University.

Hodge, Robert W., Paul N. Siegel, and Peter H. Rossi

1966 Occupational Prestige in the United States, 1925-1963. In Class, Status, and Power. Reinhard Bendix and S.M. Lipset, eds. pp. 322-334. New York: Free Press.

Hoebel, E. Adamson

1954 The Law of Primitive Man. Boston: Harvard University Press.

Hogbin, H. Ian

1934 Law and Order in Polynesia. New York: Harcourt, Brace and Company.

Hollingsworth, Robert J., William Feldman and David Clark

1973 The Ohio Small Claims Court: An Empirical Study. *Cincinnati Law Review* 42:469-527.

Hunt, Eva, and Robert Hunt

1969 The Role of Courts in Rural Mexico. In Peasants in the Modern World. Philip K. Bock, ed. pp. 169-39 Albuquerque: University of New Mexico Press.

Jacob, Herbert

1969 Debtors in Court. Chicago: Rand McNally.

John, Vera

1971 Language and Educability. In The Culture and Poverty: A Critique. Eleanor Leacock, ed. pp. 63-80. New York: Simon and Schuster.

- Johnson, Allen
1978 Quantification in Cultural Anthropology. Stanford: Stanford University Press.
- Kimball, Solon T., and John H. Provinse
1942 Navajo Social Organization in Land Use Planning. Applied Anthropology 1:18-25.
- Klein, Robert
1971 Buyer vs. Seller in Small Claims Courts. Consumer Reports 36:624.
- Koch, Klaus Frederick
1974 War and Peace in Jalemo: The Management of Conflict in Highland New Guinea. Cambridge: Howard University Press.

1978 Pigs and Politics in the New Guinea Highlands: Conflict Escalation among the Jale In the Disputing Process--Law in Ten Societies. Laura Nader and Harry F. Todd, Jr., ed. pp. 41-58. New York: Columbia University Press.
- Kochman, Thomas
1972 Toward an Ethnography of Black American Speech Behavior. In Afro-American Anthropology. Norman E. Whitten, Jr. and John F. Szwe, eds. pp. 145-162. New York: Free Press.
- Krause, Elliott
1971 The Sociology of Occupations. Boston: Little, Brown & Company.
- Lasch, Christopher
1978 The Culture of Narcissism. New York: Norton.
- Labov, W.
1972 The Study of Language in its Social Context. In Language and Social Context. Pier Paolo Giglioli, ed. pp 283-308. Harmondsworth, Middlesex, England: Penguin.
- Levine, Manual
1918 The Conciliation Court of Cleveland. Judicature 2:10-16.
- Lieberman, Kenneth
1981 Understanding Aborigines in Australian Courts of Law. Human Organization 40(3):247-255.
- Llewellyn, Karl, and E. Adamson Hoebel
1941 The Cheyenne Way. Norman: University of Oklahoma Press.
- Lowy, Michael J.
1978 A Good Name is Worth More Than Money: Strategies of Court Use in Urban Ghana. In The Disputing Process -- Law in Ten Societies. Laura Nader and Harry F. Todd, Jr., eds. pp. 181-208. New York: Columbia University Press.

MacCallum, Spencer

- 1967 Dispute Settlement in an American Supermarket. *In* Law and Warfare. Paul Bohannon, ed. pp. 291-299. Garden City, New York: Natural History Press.

Maccaulay, Stewart

- 1963 Non-Contractual Relations in Business. *American Sociological Review* 28:55-66.
 1979 Lawyers and Consumer Protection Laws. *Law and Society Review* 14:115.

Maine, Sir Henry

- 1861 (1972 edition) *Ancient Law*. London: Kegan Paul.

Malinowski, Bronislaw

- 1926 *Crime and Custom in Savage Society*. London: Kegan Paul.
 1934 Introduction. *In* H. Ian Hogbin *Law and Order in Polynesia*. New York: Harcourt, Brace and Company.
 1945 *The Dynamics of Culture Change*. New Haven: Yale University Press.
 1961 *Argonauts of the Western Pacific*. New York: E. P. Dutton.

Mather, Lynn, and Barbara Yngvesson

- 1980-81 Language, Audience, and the Transformation of Disputes. *Law and Society Review* 15(3-4):775-821.

Mayhew, Leon, and Albert J. Reiss, Jr.

- 1973 Social Class and Legal Services in America. *In* *The Social Organization of Law*. Donald Black and Maureen Mileski, eds. pp. 181-196. New York: Seminar Press.

Mayo, Elton

- 1940 *The Human Problems of an Industrial Civilization*. New York: Viking.

McCord, Guyte, Sr.

- 1956 A Glimpse at the Labors of the Court of Appeals of the Territory of Florida. *Apalachee* IV:87-93.

McEwen, Craig A., and Richard J. Maiman

- 1981 Small Claims Mediation in Maine: An Empirical Assessment. *Maine Law Review* 33:237-268.

McFadgen, Terence

- 1972 Dispute Resolution in the Small Claims Context: Adjudication, Arbitrator or Mediation. LLM Thesis, Harvard Law School.

Merry, Sally Engle

- 1979 Going to Court: Strategies of Dispute Management in an American Urban Neighborhood. *Law and Society Review* 13:891.

Mileski, Maureen

- 1971 Courtroom Encounters: An Observational Study of a Lower Criminal Court. *Law and Society Review* 5:473-538.

Moore, Sally Falk

- 1978 *Law as Process*. London: Routledge and Kegan Paul.

Moulton, Beatrice

- 1969 The Persecution and Intimidation of the Low Income Litigant as Performed by the Small Claims Court in California. *Stanford Law Review* 21:1657-1658.

Mouzelis, Nicos P.

- 1967 *Organization and Bureaucracy: An Analyses of Modern Theories*. Chicago: Aldine.

Nader, Laura

- 1972 Up the Anthropologist--Perspectives Gained From Studying Up. *In* *Reinventing Anthropology*. Dell Hymes, ed. pp. 284-311. New York: Vintage.

- 1977 Powerlessness in Zapotec and United States Societies. *In* *The Anthropology of Power*. Raymond D. Fogelson and Richard N. Adams, eds. pp. 309-325. New York: Academic Press.

Nader, Laura, ed.

- 1969a *Law in Culture and Society*. Chicago: Aldine.

- 1969b *Styles of Court Procedure: To Make a Balance*. *In* *Law in Society and Culture*. Laura Nader, ed. pp. 69-91. Chicago: Aldine.

- 1980 *No Access to Law: Alternatives to the American Judicial System*. New York: Academic Press.

Nader, Laura, and Jane Collier.

- 1978 Justice: A Woman Blindfolded? *In* *Women in the Courts*. Winifred L. Hepperle and Laura Crites, eds. pp. 202-221. Williamsburg, Va.: National Center for State Courts.

Nader, Laura, and Duane Metzger

- 1963 Conflict Resolution in Two Mexican Communities. *American Anthropologist* 65:584.

Nader, Laura, and Harry F. Todd, Jr., eds.

- 1978 *The Disputing Process: Law in Ten Societies*. New York: Columbia University Press.

Nader, Laura, and Barbara Yngvesson

1973 On Studying the Ethnography of Law and Its Consequences. In Handbook of Social and Cultural Anthropology. J. Honigman, ed. pp. 883-924. Chicago: Rand McNally.

National Institute for Consumer Justice

1972 Staff Studies on Small Claims Court. Boston: National Institute for Consumer Justice.

Nie, Norman H., C. Hadlai Hull, Jean G. Jenkins, Karen Steinbrenner, and Dale H. Bent

1975 Statistical Package for the Social Sciences. New York: McGraw-Hill.

O'Barr, William M.

1982 Linguistic Evidence: Language, Power, and Strategy in the Courtroom. New York: Academic Press.

Pagter, Carl, Robert McClosky, and Mitchell Renis

1964 The California Small Claims Courts. California Law Review. 52:876.

Paisley, Clifton

1968 From Cotton to Quail--An Agricultural Chronicle of Leon County, Florida, 1860-1967. Gainesville, Fla.: University of Florida Press.

Paredes, J. Anthony, James C. Sabella, and Marcus J. Hepburn

1977 Human Factors in the Economic Development of a Northwest Florida Gulf Coast Fishing Community. Sea Grant.

Parker, Daisey

1948 The Leon County Court 1825-1833. Apalachee V: 30-43.

Patton, Donald J., Elizabeth Purdum, and Frank A. Unger

1981 History and Culture. In Atlas of Florida. Edward A. Fernald ed. pp. 114-151. Tallahassee: Florida State University Foundation.

Paul, Benjamin, ed.

1955 Health, Culture, and Community. New York: Russell Sage.

Pearsall, Marion

1966 Cultures of the American South. Anthropological Quarterly 39(2):128-141.

Pelto, Pertti J., and Gretel H. Pelto

1978 Anthropological Research: The Structure of Inquiry. Cambridge: Cambridge University Press.

Pospisil, L.

1958 Kapauku Papuans and Their Law. New Haven: Yale University Press.

1971 Anthropology of Law. New York: Harper and Row.

1973 E. Adamson Hoebel and the Anthropology of Law. Law and Society Review 7(4):537-560.

Pound, Roscoe

1913 The Administration of Justice in the Modern City. Harvard Law Review 26:302.

Purdum, Elizabeth

1981 Examining the Claims of a Small Claims Court. Judicature 65(1):25-37.

Radcliffe-Brown, A.R.

1924 The Mother's Brother in South Africa. South African Journal of Science. XXL:542-555.

Rapson, Ira John, Jr.

1961 The Dane County Small Claims Court, Its Functions and Social Impact. Ph.D. Dissertation, Law School, University of Wisconsin.

Rattray, R.

1929 Ashanti Law and Constitution. Oxford: Clarendon Press.

Redfield, Robert

1967 Primitive Law. In Law and Warfare. Paul Bohannon, ed. pp. 3-24. Garden City, New York: Natural History Press.

Richardson, Joe M.

1978 Florida Black Codes. Florida Historical Quarterly 47:365-379.

Roberts, Simon

1979 Order and Dispute: An Introduction to Legal Anthropology. New York: St. Martin's Press.

Roethlisberger, Fritz J., and William J. Dickson

1939 Management and the Worker. Cambridge, Mass.: Harvard University Press.

Ruhnka, John, Steven Weller, and John Martin

1978 Small Claims Courts: A National Examination. Williamsburg, Virginia: National Center for State Courts.

Saks, Michael J., and Reid Hastie

1978 Social Psychology in Court. New York: Van Nostrand Reinhold Co.

Sarat, Austin

- 1976 Alternatives in Dispute Processing: Litigation in a Small Claims Court. *Law and Society Review* 10(3):339-373.

Serber, David

- 1971 A Discussion of the Policy Services Bureau of the California Department of Insurance. Unpublished Undergraduate Thesis, Department of Anthropology, University of California Berkeley. (quoted in Nader 1972)

Siegel, Sidney

- 1956 *Nonparametric Statistics*. New York. McGraw-Hill.

Small Claims Court Study Group

- 1972 *Little Injustices: Small Claims Courts and the American Consumer*. Washington: Center for Auto Safety.

Smith, R.G.

- 1970 *The Small Claims Court: A Sociological Interpretation*. Ph.D. Dissertation, Sociology Department, University of Illinois.

Smith, Reginald Haber

- 1919 *Denial of Justice*. *Judicature* 3(4):112-126.

Smith, Watson, and John M. Roberts

- 1954 *Zuni Law: A Field of Values*. Cambridge, Mass.: Peabody Museum Papers 43(1).

Sofer, Cyril

- 1972 *Organizations in Theory and Practice*. New York: Basic Books.

Spicer, Edward, ed.

- 1952 *Human Problems in Technological Change*. New York: Russell Sage.

Spradley, James P.

- 1970 *You Owe Yourself A Drunk: An Ethnography of Urban Nomads*. Boston: Little, Brown.

- 1979 *The Ethnographic Interview*. New York: Holt, Rinehart and Winston.

Starr, June

- 1978 *Dispute Settlement in Rural Turkey*. Leiden, Netherlands: E. J. Brill.

Starr, June, and Barbara Yngvesson

- 1975 Who Wins and Why: Zeroing-in on Compromise. *American Ethnologist* 2:553-567.

Stauber, Alvin

- 1980 *Small Claims in Florida: An Empirical Study*. *Florida Bar Journal*. 54(2):130-138.

Tallahassee Leon County Planning Department

1979a A Statistical Digest. Tallahassee, Fla.: Tallahassee Leon County Planning Department.

1979b Trends to the Year 2000 and Development Opportunities and Constraints for Tallahassee-Leon County Florida. Tallahassee, Fla.: Tallahassee/Leon County Planning Department.

Taylor, Carol

1970 In Horizontal Orbit: Hospitals and the Cult of Efficiency. New York: Holt, Rinehart and Winston, Inc.

Taylor, Frederic

1911 The Principles of Scientific Management. New York: Harper and Row.

Tebeau, Charlton W.

1971 A History of Florida. Miami: University of Miami Press.

Todd, Harry F., Jr.

1978 Litigious Marginals: Character and Disputing in A Bavarian Village. In The Disputing Process--Law in Ten Societies. Laura Nader and Harry F. Todd, Jr., eds. pp. 86-121. New York: Columbia University Press.

Turner, V.W.

1957 Schism and Continuity in an African Society. Manchester: Manchester University Press.

University of Florida, Bureau of Economic and Business Research, College of Business Administration.

1979 Florida Statistical Abstract. Gainesville, Fla.: University Presses of Florida.

Wallace, A.F.C.

1965 The Problem of the Psychological Validity of Componential Analysis. American Anthropologist 67 (part 2): 229-48.

Warner, W. Lloyd, and Joseph Low

1947 The Social System of the Modern Factory. New Haven: Yale University Press.

Warner, W. L., M. Meeker, and K. Eells

1949 Social Class in America: A Manual of Procedures for the Measurement of Social Status. Chicago: Chicago Research Association.

Warren, Roland L.

1972 The Community in America. Chicago: Rand McNally.

Weller, Steven, and John C. Ruhnka

1979 Practical Observations on Small Claims Court. Williamsburg, Va.: National Center for State Courts.

Whyte, William Foot

- 1978 Organizational Behavior Research--Where Do We Go From Here? In Applied Anthropology in America. Elizabeth M. Eddy and William L. Partridge, eds. pp. 129-146. New York: Columbia University Press.

Winsberg, Morton

- 1981 Economy. In Atlas of Florida. Edward A. Fernald, ed. pp. 152-189. Tallahassee: Florida State University Foundation.

Witty, Cathie

- 1978 Mediation and Society. New York: Academic Press.

Wolfe, Randy P.

- 1980 Small Claims Courts: Records Management and Case Processing. Williamsburg, Va.: National Center for State Courts.

Yngvesson, Barbara

- 1976 Responses to Grievance Behavior: Extended Cases in a Fishing Community. American Ethnologist. 3:353.

- 1978 The Reasonable Man and the Unreasonable Gossip: On the Flexibility of Legal Concepts and the Elasticity of Legal Time. In Cross-Examinations: Essay in Memory of Max Gluckman. P. H. Gulliver, ed. pp. 133-154. London: E. J. Brill.

Yngvesson, Barbara, and Patricia Hennessey

- 1975 Small Claims, Complex Disputes: A Review of the Small Claims Court Literature. Law and Society Review 9(2):219-274.

BIOGRAPHICAL SKETCH

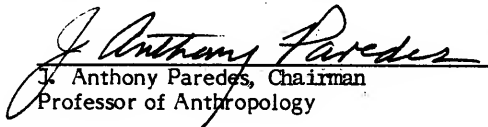
Elizabeth Dixon Purdum was born on December 8, 1948, in Baltimore, Maryland. She attended Mary Washington College of the University of Virginia and graduated from George Washington University with a B.A. degree in English Literature. While in college, she became interested in anthropology, and after a couple of years of travel and working, enrolled in the master's program in anthropology at Florida State University. While in the master's program, she worked for the Department of Anthropology as a teaching assistant. The author completed her M.S. degree in anthropology in 1975.

In the fall of 1975 she entered the Ph.D. program in anthropology at the University of Florida. Her experience at the University of Florida strengthened her interests in law, contemporary society, and applied anthropology. She was employed by the University of Florida as a teaching assistant.

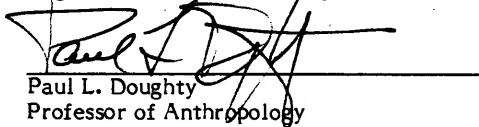
After the author completed her coursework for the doctoral program, she returned to Tallahassee and accepted a job with the Florida Resources and Environmental Analysis Center at Florida State University. She has worked for the Center as an editor, a research writer, and a research assistant. She has had articles and book reviews published in the Florida Medical Journal, Judicature, and Urban Anthropology, and has completed two contracts on small claims court for the Florida Office of the State Courts Administrator.

In 1976 the author married Kenneth Plante. Their son David was born on December 31, 1981.

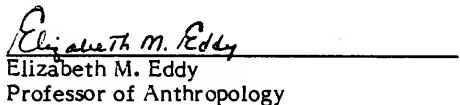
I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Philosophy.


J. Anthony Paredes, Chairman
Professor of Anthropology

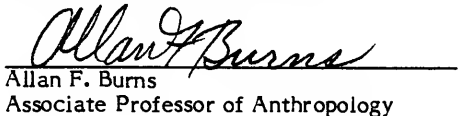
I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Philosophy.


Paul L. Doughty
Professor of Anthropology

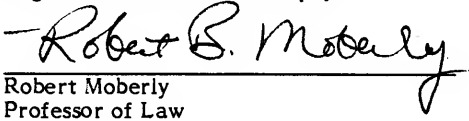
I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Philosophy.


Elizabeth M. Eddy
Professor of Anthropology

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Philosophy.


Allan F. Burns
Associate Professor of Anthropology

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Philosophy.


Robert Moberly
Professor of Law

This dissertation was submitted to the Graduate Faculty of the Department of Anthropology in the College of Liberal Arts and Sciences and to the Graduate Council, and was accepted as partial fulfillment of the requirements for the degree of Doctor of Philosophy.

April, 1983

Dean for Graduate Studies and Research

7-11-08
10:00
10:00

UNIVERSITY OF FLORIDA



3 1262 08552 8460